



**Australian Government**  

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**Department of Foreign Affairs and Trade**

FOI Ref: 1901-F2118  
File No: 19/548  
2 April 2019

.Posty

By e-mail to: [foi+request-5188-9cf7aaac@righttoknow](mailto:foi+request-5188-9cf7aaac@righttoknow).

Dear Posty

**Re: Freedom of Information (FOI) Request – request for waiver of charges**

I refer to your FOI request for

*"I request—under the Freedom of Information Act 1982—copies of the following documents: All documents as is (that is, redacted or unredacted) from all previously made decisions on your department's FOI log that are currently not available for download direct from the website."*

I also refer to your e-mail of 2 February 2019, in which you sought waiver of the processing charges on public interest grounds.

I am the decision-maker authorised in accordance with the provisions of section 23(1) of the FOI Act. I am writing to inform you that I have decided not to reduce or waive the charges of \$157.50 payable in respect of your FOI request.

**Reasons for decision**

I have considered your contentions that:

- 1) the documents *"have already been decided upon"*;
- 2) *"there needs to be a very good reason for why the documents are not already available for download on the website"*;
- 3) *"these FOIs have already been granted as decided in some form of the public interest of each individual decision to warrant their delivery to the original applicant..."*;
- 4) *"Waiver of the charge would enhance the agency-client relationship with the greater public"*; and
- 5) the *"total overall charges to \*the commonwealth\*"*.

I have considered your argument that *"there needs to be a very good reason for why the documents are not already available for download on the website"*. Section 11C(3) of the FOI Act deals with how information released under the FOI Act should be published. It provides that the information may be made available for download (section 11C(3)(a) of the FOI Act) or that publication can occur by providing details as to how the information may be obtained (section 11C(3)(c) of the FOI Act).

The FOI Guidelines published by the Office of the Australian Information Commissioner, state at 14.44:

*"The FOI Act does not specifically require information attached or referred to in a disclosure log to be made available indefinitely. However, the information listed in a disclosure log should be retained even if a document or information attached to a listed item has been removed. It is likely that the log will grow in length over time and provide an historical as well as a current record of information released by an agency or minister under the FOI Act."*

At 14.45 the Guidelines also state:

*"In the course of routine maintenance or updating of a website an agency may decide to withdraw some disclosure log content and make the information available in another form, for example, on request."*

The Department identifies in its disclosure log that certain documents are available on request. This approach is consistent with the FOI Act and Guidelines.

I have also considered your arguments that the documents *"have already been decided upon"*, *"these FOIs have already been granted as decided in some form of the public interest of each individual decision to warrant their delivery to the original applicant..."* and that *"Waiver of the charge would enhance the agency-client relationship with the greater public"*. I have considered that your request captures, between the years 2010 and 2018, approximately 224 entries on the Department's disclosure log which includes approximately 10,807 pages. I have calculated that it would take an FOI officer in excess of 10 hours to locate, collate and provide all documents to you. This estimate does not include applying any redactions or reviewing the documents, as this has already occurred.

I have also considered sections 11C(4)(a) and (b) of the FOI Act, which provides that:

*(4) The agency may impose a charge on a person for accessing the information only if:*

*(a) the person does not directly access the information by downloading it from the website (or another website); and*

*(b) the charge is to reimburse the agency for a specific reproduction cost, or other specific incidental costs, incurred in giving the person access to that particular information.*

Notwithstanding that the documents requested by you are previous FOI decisions and do not require fresh review for decision making, the scope of your request is so broad as to impose a meaningful burden on the Department. For the reasons outlined above, I am of the view that the

costs issued in this matter are reasonable and consistent with sections 11C(4)(a) and (b) of the FOI Act. In this regard I have also considered the *"total overall charges to \*the commonwealth\*"*, and consider that it is in the public interest that you contribute to the resource costs in processing this request.

This is a reviewable decision. Information about seeking a review is attached.

**Next steps**

Now I have written to you with my decision on your request for waiver, you have 30 days within which to:

- pay the charges amount of \$157.50 or the deposit amount of \$39.38;
- seek review of my decision (as per the enclosed information); or
- withdraw your FOI request.

If we do not receive a response from you as outlined above within 30 days of your receipt of this letter, your request will be deemed to have been withdrawn, in accordance with section 29 of the FOI Act.


Should you wish to re-scope your request to reduce the charges, you may wish to consider:

- 1) identifying specific disclosure log entries you wish to access; and
- 2) Providing a specific timeframe for the disclosure log documents you wish to access.

If you do this, the narrowed request would be handled as a new FOI request for the purposes of statutory timelines.

If you have any questions about this decision, please contact [foi@dfat.gov.au](mailto:foi@dfat.gov.au)

Yours sincerely



Lindsay Buckingham  
Director, Freedom of Information and Privacy Law Section

## **Your review rights**

### *Internal review*

Under the provisions of section 54 of the FOI Act, you are entitled to request a review of my decision. Your request should be made in writing and sent within 30 days of receipt of this letter addressed to:

Director  
Freedom of Information and Privacy Law Section  
Department of Foreign Affairs and Trade  
R G Casey Building  
John McEwen Crescent  
Barton ACT 0221

### *Australian Information Commissioner*

Under the provisions of section 54 of the FOI Act, you are entitled to request a review by the Australian Information Commissioner of my access refusal decision.

You may also make a complaint to the Australian Information Commissioner under section 70 of the FOI Act on the Department's performance of its functions or the exercise of power under the FOI Act.

Your request for review or complaint should be addressed to:

Office of the Australian Information Commissioner  
GPO Box 5218  
Sydney NSW 2001  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
Telephone: 1300 363 992  
Fax: (02) 9284 9666