



Australian Government

Department of Communications and the Arts

FOI reference number: 44-1819

Mr C Faulk

Via email: foi+request-5343-ea88dd0e@righttoknow.org.au

Dear Mr Faulk

I refer to your email, received by the department on 18 April 2019, concerning your request under the *Freedom of Information Act 1982* (FOI Act) for the minutes of the 5G Working Group. You have requested a waiver or reduction of the charges for your request on the public interest grounds.

The purpose of this letter is to address the comments you made in your contention and to notify you of my decision and reasons for it.

Authority

I am an officer authorised by the Secretary of the department to make decisions about charges, including contentions, applying to requests for access to documents in accordance with subsection 23(1) of the FOI Act.

Charges

Section 29 of the FOI Act authorises an agency to impose a charge in respect of a request for access to a document. I have decided that charges should be imposed, consistent with the *Freedom of Information (Charges) Regulations 1982*.

On 18 April 2019 I decided a charge of \$138.78 should apply for processing your request.

I have carefully considered how the charges were calculated and the matters you have raised. I have also had regard to the objects of the FOI Act, the FOI Guidelines, and the *Freedom of Information (Charges) Regulations 1982*.

Calculation of charges

You have provided the following comments regarding how the charge was calculated:

the amount of time quoted to do this search is excessive as we are requesting whole documents from a specific set of meetings. I expect that these minutes are filed in a specific place and certainly would not take more than a few hours to peruse (your quote: 12 hours of work seems excessive).

You were quoted 0.43 hours for search and retrieval on this request, totalling \$6.45. The breakdown of the proposed charges is confirmed in the charges letter. The majority of the time the department

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will spend on this request is related to document preparation and decision making time. This is due to consultation required with the substantial number of parties who have attended the meetings, and the wide range of matters in the documents which will contribute to decision making time. I consider the search and retrieval time charged is modest.

Would payment cause financial hardship to the applicant?

Section 29(5)(a) of the FOI Act requires me to consider '*whether the payment of the charge, or part of it, would cause financial hardship to the applicant*'.

You have not provided any evidence that payment would cause you financial hardship. I consider the proposed charge modest and do not consider a waiver of the charge is warranted on these grounds.

Would giving access to the documents be in the public interest?

Section 29(5)(b) of the FOI Act requires me 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*'. You have requested the charge be either waived or reduced in the public interest and made the three contentions to this effect. These are addressed in turn below.

My general observation is that from my reading of the minutes, the Working Group has not discussed the matters you suggest in a substantive way as they are not the focus of the Working Group and/or it would not be appropriate for it to do so. The focus of the 5G Working Group has been on the potential role of 5G in vertical industry sectors like transport, agriculture and healthcare and potential blockers and enablers to the use of 5G in these sectors.

3.6GHz spectrum

You contend:

There is a substantive potential conflict of interest where Government and Industry form a Working Group in the midst of the auctioning of the 3.6GHz spectrum by ACMA. Therefore it is in the general public interest to demonstrate that the Working Group operated with good intention and in the interests of the Australian public.

I do not consider that the release of these documents would advance the public interest in this regard as the 5G Working Group did not discuss substantive matters with respect to preparations for the 3.6GHz allocation, as it was a separate process that was subject to strict probity rules.

Security

You contend:

It would be in the general public interest to know what the Working Group has discussed with regards to security, in particular with regards to the involvement of Huawei.

In August 2018 Australia as part of the Five Eyes international intelligence alliance declared the use of Huawei telecommunications equipment, particularly in 5G networks, posed "significant security risks" yet they remain listed as members of the 5G Working Group – it is in the general public interest to know what discussions Huawei have been involved in or continue to influence with regards to the Working Group.

I do not consider that the release of the minutes of the 5G Working Group would advance the public interest in this regard as the group does not deal with national security issues as it is not a suitable group, nor is it cleared to do so, nor would it be appropriate for it to do so.

I note that there are a number of factual errors in your contention. On 23 August 2018, the Government provided clear guidance to carriers on how the new legal obligations under the Telecommunications Sector Security Reforms would apply to 5G networks. This included guidance that the 'involvement of vendors who are likely to be subject to extrajudicial directions from a foreign government that conflict with Australian law, may risk failure by the carrier to adequately protect a 5G network from unauthorised access or interference'. This guidance applies equally to all vendors.

Densification and safety

You contend that:

It is in the general public interest to know of discussions pertaining to small cell architecture and densification of mobile transmitters. A substantial section of the public is, or may have concern to the probability of more transmitting stations being built near to their home or place of work or indoors.

Dense Air CEO Paul Senior expects small cell infrastructure to be deployed in indoor locations in metro areas as well as outer metro areas for example. There are a substantial section of the public who would be interested in this with regards to their health.

The public expects the rollout of 5G to be done in a safe manner. It is in the general public interest to know what safety measures may or may not have been discussed. A substantial section of the public would have concern in particular to the safety of proposed small cell architecture. A substantial section of the public would have concern to the roll-out of mm wavelength frequencies and would like to hear what the industry is pushing for in regards to what bandwidths are being discussed.

There are legitimate health concerns with regards to 5G. Releasing the minutes of the Working Group would allow the general public to be informed about Industry and Government intention for the future deployment and intensification of the mobile network.

The release on discussion about where, how and how much frequency and power would be of specific interest to a substantial section of the public who may be electromagnetically hypersensitive or have concern as to the exposure of themselves or their children.

It is in the general public interest to know if health was discussed with regards to the first term of reference for the Working Group: identify enablers and barriers to the deployment and effective use of 5G in Australia, including at the sector and industry level; and if there were considerations which people with health concerns would like to adapt to.

It is in the general public interest to know if health was discussed with regards to the third term of reference for the Working Group: examine how the Commonwealth regulatory settings in sectors, including but not limited to communications, can be optimised for 5G networks and technologies; and if expertise was sought for health limits, or if ARPANSA were consulted at any stage.

I also do not consider that the release of the documents will progress the public interest in this regard as the health and safety of 5G is not discussed or considered in this forum.

It is the role of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) to set the safety standards for exposure to electromagnetic energy (EME). This is not, therefore, a matter for the 5G Working Group.

ARPANSA advises that its exposure limits are set well below the level at which adverse health effects are known to occur and include a wide safety margin to protect the public. Typically mobile phones and base stations operate at a small percentage of the ARPANSA standard. The Australian Communications and Media Authority's regulatory arrangements require facilities and wireless devices to comply with the exposure limits in the ARPANSA standard.

Conclusion

The content of the documents includes substantial third party information and, regardless of any public interest in the documents, the department is required to consult with these entities and consider their comments on release. The time that it will take to do this comprises most of the charge. I consider the charge is calculated modestly, particularly noting it includes five free hours, and at the lowest reasonable cost to you, considering the work that the department must do to process your request. As indicated above, I do not consider release of the documents will advance the public interest for the reasons you have contended. I therefore consider it is appropriate for you to contribute to the processing of the request. I have decided not to waive or reduce the charge in this case.

Payment details

Please refer to the charges letter dated 18 April 2019 for information regarding options on how to pay the charge.

Next steps in processing your request

If you would like the department to continue processing your request, you must respond to the department within **30 calendar days** after receiving this notice.

If you do not respond within 30 calendar days, your request will be taken to have been withdrawn and no further action will be taken by the department.

Time periods for processing your request

Section 31 of the FOI Act provides that where a notice is sent to an applicant regarding the payment of a charge in respect of a request, the time limit for processing the request is suspended from the date the applicant was notified of the charge until:

- the day after the charge (or deposit) is paid; or
- if applicable, where a subsequent review decision has been provided, the day after:
 - a charge or deposit has been paid; or
 - the applicant is notified of a decision to not impose the charge.

Review rights

If you are dissatisfied with my decision in relation to the charge, under the FOI Act you may seek a review of my decision through:

- an internal review conducted by the department
- a review by the Information Commissioner.

Internal review

If you wish to seek an internal review, you must apply to the department within 30 days after the day you are notified of this decision. Your application for an internal review can be sent via email to foi@communications.gov.au. The department must process your internal review within 30 days.

Information Commissioner review

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (OAIC) to review this decision. An application for review by the Information Commissioner must be made in writing within 60 days after the day you are notified of this decision.

You can find information about requesting a review and other information about FOI on the OAIC website www.oaic.gov.au. If you lodge a request for review with the Office of the Australian Information Commissioner, please advise the department via foi@communications.gov.au that you have done so.

Complaints

Under the FOI Act, you can also make a complaint to the Commonwealth Ombudsman if you have concerns about how the Department handled a request for documents under the FOI Act, or took any other action under the FOI Act. There is no fee for making a complaint to the Commonwealth Ombudsman.

Information about making a complaint to the Commonwealth Ombudsman is available in its website: www.ombudsman.gov.au. You can also phone the Ombudsman on 1300 362 072 or write to GPO Box 442, CANBERRA ACT 2601.

In accordance with Regulation 10(1), the charges will be reassessed upon finalisation of the request. If it becomes apparent that the department has over-estimated the preliminary charges and you have paid the full amount, a refund will be provided, or, if a deposit has been paid, an appropriately reduced balance will be sought from you, prior to providing you with documents relevant to your request.

Contacts

If you wish to discuss this matter, please contact the department's FOI Coordinator on (02) 6271 1219 or via email at FOI@communications.gov.au

Yours sincerely



Philip Mason
Assistant Secretary
Future Connectivity Branch

15 May 2019