



19 September 2019

Our reference: LEX 46187

Justin Warren
Right to Know

Only by email: foi+request-5538-6e966511@righttoknow.org.au

Dear Mr Warren

Freedom of Information Request – Reconsideration of Charges

I refer to your email dated 20 August 2019, contending that a charge should not be imposed in relation to your Freedom of Information (FOI) dated on 29 July 2019.

Your request under the *Freedom of Information Act 1982 (FOI Act)*, was for access to documents in the following terms:

I request a copy of the Privacy Impact Assessment reference number 21987 titled "DHS Response to the Independent Review of Health Providers' Access to Medicare Card Numbers" as listed on the department's Privacy Impact Assessment Register.

Background

On 20 August 2019, you were notified that you are liable to pay a charge for the processing of your request and that the preliminary assessment of that charge was \$106.15 (**charge**). The charge was calculated as follows:

Search and retrieval time: 0.97 hours, at \$15.00 per hour	\$14.55
Decision-making time, (*after deduction of 5 hours): 3.58 hours, at \$20.00 per hour	\$91.60
TOTAL	\$106.15

*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

On 20 August 2019, you provided submissions in support of your reconsideration request.

Decision

I have now reconsidered the charge notified to you on 20 August 2019. My decision is below.

What I took into account

In reaching my decision on reconsideration of the charge, I took into account:

- your original request dated 29 July 2019;
- the department's correspondence dated 20 August 2019, notifying you of the charge;
- your reconsideration request dated 20 August 2019, contending that the charge should not be imposed;
- the documents falling within the scope of your request;
- consultations with departmental officers about:
 - the nature of the requested information; and
 - the department's operating environment and functions;
- relevant case law;
- the FOI Act;
- the *Freedom of Information (Charges) Regulations 2019 (Regulations)*; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**).

Reconsideration of the charge

I have reconsidered the preliminary charge that was notified to you on 20 August 2019.

I acknowledge that your reasons for seeking reconsideration of the charge are based on the calculation of the charge and whether release of the document in question is in the general public interest or in the interest of a substantial section of the public.

Calculation of the preliminary charge

I acknowledge that your first reason for seeking reconsideration of the charge is based on the processing time of the request. Therefore, for the sake of completeness, and to consider the application of the charges in response to your request wholly anew, I have reconsidered the calculation of the preliminary charge that was notified to you.

In response to your request, the department conducted searches of its records and identified one document, totalling 40 pages, to be within scope of your request.

In relation to a preliminary estimate of charges, paragraph 4.51 of the Guidelines states:

The notice to an Applicant under s 29(1) of an agency or minister's preliminary assessment of a charge can include an estimated charge, if all steps necessary to make a decision on the request have not yet been taken (reg 9(2)). In practice, the preliminary assessment may be based on two elements:

- a charge (based on the Charges Regulations) for work already done by the agency or Minister, for example, in search and retrieval of documents
- an estimated charge for work still to be done.

I have reconsidered the calculation of the charge and consider that the original charge notified to you on 20 August 2019 did not accurately reflect:

- the time actually spent on document search and retrieval; and
- the estimate of the time still required to process the relevant document and make a decision in respect of your request.

I consider that the following charge of \$55.30 (**revised charge**) is an accurate reflection of the time already spent processing your request, and of the estimate of time still required for work to be completed by the department. This charge is calculated as follows:

Search and retrieval time: 0.46 hours, at \$15.00 per hour	\$6.90
Consultation with one third party: 1 hours, at \$20.00 per hour	\$20.00
Decision-making time, (*after deduction of 5 hours): 1.42 hours, at \$20.00 per hour	\$28.40
TOTAL	\$55.30

Paragraph 4.5 of the Guidelines notes that 'charges should fairly reflect the work involved in providing access to documents on request'.

I consider that this new calculation has complied with the lowest reasonable cost objective under section 3(4) of the FOI Act, and that it fairly reflects the work involved in processing your request. I am satisfied with the charge of \$55.30.

Reconsideration of the charge – Financial hardship and the public interest

Section 29(5) of the FOI Act provides that, without limiting the matters that the agency may take into account when making a decision about whether to reduce or not impose a processing charge, the decision maker must consider:

- whether payment of a charge, or part of it, would cause financial hardship to an applicant; 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.

In determining whether to reduce or waive the revised charge of \$55.30, my consideration of these matters is set out below.

Financial Hardship

I note that you have not provided any evidence to indicate that payment of the charge would cause financial hardship. Therefore, I have decided not to reduce the charge on this basis.

The Public Interest

Section 29(5)(b) of the FOI Act provides that an agency must also take into account whether the provision of access to the document within scope of your request is either in the general public interest, or in the interest of a substantial section of the public. In other words, there must be a benefit flowing generally to the public or a substantial section of the public from disclosure of the documents in question. This requires me to consider the nature of the relevant document and the context of its release.

Paragraphs 4.81 and 4.82 of the Guidelines also state:

An applicant relying on [the public interest ground of waiver] should identify or specify the 'general public interest' or the 'substantial section of the public' that would benefit from this disclosure. This may require consideration both of the content of the documents requested and the context in which their public release would occur.

...

the applicant may be expected to draw a link between being granted access to the documents and a derivative benefit to either the general public interest or a substantial section of the public.

In your request for reconsideration, dated 20 August 2019, you contend that public interest factors are relevant to this request. You have raised the following points:

- The department has acknowledged that the Privacy Impact Assessment (**PIA**) is conducted on all projects that:
 - involve a significant change to how the department manages personal information
 - might have a significant impact on the privacy of individuals.
- Due to the large number of people who have a Medicare card, there is an interest in how personal information is stored and accessed by Health Providers.

Consideration of the public interest

I have had regard to paragraph 4.79 of the Guidelines, which relevantly provides:

This test is different to and to be distinguished from public interest considerations that may arise under other provisions of the FOI Act.

The primary question is whether a benefit will flow to the public generally or a substantial section of the public from disclosure of the information in the document in scope of your request. This requires me to consider the nature of the document and the context surrounding its potential release.

I recognise that the issue to which your request relates, the 'independent review of Health Providers' Access to Medicare Card Numbers', and the very nature of the creation of a PIA, is a matter of public interest.

On this basis, I am persuaded that to reduce the charge would be in the general public interest or the interest of a substantial section of the public.

Other considerations

The general principle underpinning the charges mechanism under section 29 of the FOI Act was described by O'Connor J in *Re Herald & Weekly Times and Secretary, Department of Finance and Administration* [2000] AATA 506 at [48]:

Section 29 establishes the prima facie position that charges should be imposed so that the applicants contribute to the cost of processing all their requests.

This is reinforced in *Tennant and Australian Broadcasting Corporation* [2014] AAT 452, where the Administrative Appeals Tribunal stated [14]-[15], when reviewing the principles and considerations in relation to the reduction or waiver of FOI processing charges:

One such matter is the intention discernible in the imposition of the charge that the amount should reflect the time and effort involved in accessing the requested documents... In other words, there is an intention that a user pays principle should apply.

Accordingly, I am satisfied that the intention of the legislature in drafting the FOI Act was that a portion of the cost of processing requests is to be borne by the Applicant.

I also note that the charges associated with FOI requests are not designed to be an application fee or fee to access documents, rather, they are a fee that is designed to assist the department to deal with the administrative burden of processing FOI requests.

Conclusion

I am satisfied that the revised charge accurately reflects the lowest reasonable cost for the time it will take the department to process your request.

I am not persuaded that the charge should be reduced or waived on the grounds of financial hardship, however I am persuaded to reduce the charge on public interest grounds.

Having regard to the factors detailed above, I have decided to reduce the charge to a total of **\$27.65**, being 50% of the lowest reasonable processing cost, as appropriate and reasonable to provide you with a decision on access. I consider that this amount balances the fact that a portion of the cost of processing FOI requests is to be borne by the Applicant with the fact that there are public interest factors associated with this matter.

Time limits for processing your request

As you have paid the original required deposit of \$26.55 on the same day you requested the reconsideration of the charge, the department has continued to process your request while undertaking this reconsideration.

You can expect a decision for your FOI request by 27 September 2019.

If documents are to be released to you, the department will require you pay the outstanding amount of \$1.10 before any documents are provided to you.

Required Action

You should notify the department in writing within 30 days of receiving this notice that you:

- A. agree to pay the charge; or
- B. withdraw the request for access.

Please note that the payment of a charge does not guarantee access to documents, redacted or otherwise.

Further information on **Options A** and **B** is set out below.

Option A - pay the charge

You may select from one of the following payment methods:

1. Online payment via Government EasyPay - follow [this link](#) and enter the relevant details. You will need your FOI LEX reference number, **LEX 46187**; or
2. Cheque made out to the Collector of Public Monies and posted to Freedom of Information, Department of Human Services, PO BOX 7820, Canberra BC, ACT 2610; or
3. Money order made out to the Collector of Public Monies and posted to Freedom of Information, Department of Human Services, PO BOX 7820, Canberra BC, ACT 2610.

If you elect to pay the charge, please email FOI.Legal.Team@humanservices.gov.au to advise us of your payment. Please quote reference number **LEX 46187** in this correspondence.

Option B - withdraw your request

If you wish to withdraw your request, you may do so in writing.

Further assistance

If you have any questions please email FOI.LEGAL.TEAM@humanservices.gov.au.

Kind regards

Kaitlin

Authorised FOI Decision Maker
Freedom of Information Team
Employment Law and Freedom of Information Branch | Legal Services Division
Department of Human Services

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a Freedom of Information decision

Before you ask for a formal review of a FOI decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

Asking for a formal review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

1. an Internal Review Officer in the Department of Human Services (the department); and/or
2. the Australian Information Commissioner.

Note 1: There are no fees for these reviews.

Applying for an internal review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be:

- made in writing
- made within 30 days of receiving this letter
- sent to the address at the top of the first page of this letter.

Note 2: You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

If you do not receive a decision from an Internal Review Officer in the department within 30 days of applying, you can ask the Australian Information Commissioner for a review of the original FOI decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can **lodge your application:**

Online: www.oaic.gov.au
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
Email: enquiries@oaic.gov.au

Note 3: The Office of the Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

Important:

- If you are applying online, the application form the 'Merits Review Form' is available at www.oaic.gov.au.
- If you have one, you should include with your application a copy of the Department of Human Services' decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the department's decision.

Complaints to the Australian Information Commissioner and Commonwealth Ombudsman

Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Australian Information Commissioner must be made in writing. The Australian Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Commonwealth Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.