



By email: foi+request-572-757c290c@righttoknow.org.au

Dear Mr Candelori

1. I refer to your request under the *Freedom of Information Act 1982* (Cth) (FOI Act) for access to the following documents:

“any and all internal correspondence, ministerial briefing papers, policy documents, memos, roadmaps, discussions, analyses or file notes relating to penalty rates in the Hospitality and Tourism industries and the impact, if any, penalty rates under the Fair Work Act has had on employment, trading hours and profitability in that particular industry.

The above request is confined to between 8 September 2013 and 28 March 2014.”

2. On 10 April 2014, the Department advised you of the preliminary estimate of the charge for processing your request, being \$440 (the Charge).
3. On the same day, the Department received your email contending that the Charge should be reduced or not imposed on public interest grounds.

Decision

4. I am authorised to make decisions under the FOI Act and following is my decision in relation to the Charge and the reasons for that decision.
5. I have decided to reduce the Charge by 50 per cent to \$220.00 (the Reduced Charge).

Reasons for decision

6. I have taken the following material into account in making my decision:
 - the Department’s letter notifying you of the Charge, dated 10 April 2014;
 - your email received on 10 April 2014 contending that the Charge should be reduced or not imposed on public interest grounds;
 - the documents falling within the scope of your request;
 - the FOI Act;
 - the *Freedom of Information (Charges) Regulations 1982* (the Regulations);
 - guidelines issued by the Australian Information Commissioner (the Guidelines); and
 - decisions of the FOI Commissioner relating to charges.

Calculation of the Charge

7. As a preliminary step in deciding whether to impose the Charge, I have examined the calculations which were used to determine the Charge.

8. In its letter of 10 April 2014 the Department advised you that it had in its possession approximately 26 documents containing an estimated 130 pages relevant to your request. The Charge, totalling \$440 was calculated on the following basis:

Search and retrieval time: 10 hours, at \$15.00 per hour:	\$150.00
Decision-making time: 19.5 hours (minus the first 5 hours) at \$20.00 per hour:	\$290.00
TOTAL	\$440.00

9. In calculating an estimated processing charge for your request, the Department applied the relevant provisions of the FOI Act and the Regulations. The Department entered the information regarding the number of the documents into a calculator provided by the Australian Government Solicitor. Whilst use of this calculator is not mandated, it is provided to agencies for use in the calculation of processing charges under the FOI Act and is in common usage. I then applied my own experience to evaluate the reasonableness of the amount calculated.
10. Having examined the calculation of the Charge for this request and the reasoning behind it, I am satisfied with the amount of the Charge and consider that it has been calculated in accordance with the Regulations.

Reduction or waiver of the charge

11. Subsection 29(5) of the FOI Act provides that, without limiting the matters that an 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.

Financial hardship

12. You have not contended that payment of the Charge, or part of it, would cause you financial hardship. Accordingly, I have no basis upon which I can make a decision to reduce or not impose the Charge by reason that payment of the Charge would cause you financial hardship.

Public interest and other factors

13. Subparagraph 29(5)(b) of the FOI Act provides that the Department must 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'. That is, there must be a benefit flowing more generally to the public or a substantial section of the public.
14. Paragraph 4.55 of the Guidelines further provides that it is important to identify the 'general public interest' or the 'substantial section of the public' that would benefit from disclosure. Often this will require consideration both of the content of the documents and the context of their release.
15. In support of your request for waiver of the Charge on public interest grounds, you made the following submissions:

"... the status of penalty rates in the hospitality industry is one of significant public interest in the media, is the subject of a productivity commission review and has attracted direct comment from members of the government. For example, see the comments by Senator Eric Abetz in The Australian in February: <http://www.theaustralian.com.au/national-affairs/policy/coalition-sets-sights-on-awards/story-fn59noo3-1226818082098>

*Jamie Briggs has also directly commented about penalty rates in the hospitality industry on the ABC's Q&A program on 24 February:
<http://www.abc.net.au/tv/qanda/txt/s3938479.htm>*

16. In considering whether access to the documents is in the public interest or in the interest of a substantial section of the public, I have reviewed the content of the documents in question. The documents relate to discussion, data or research about penalty rates in the hospitality and tourism industries and I acknowledge that the documents may be of some interest to a substantial section of the public in that:
 - penalty rates have been discussed in the media and by Members of Parliament;
 - the Productivity Commission is reviewing the penalty rates in the hospitality industry;
 - the documents relate to a matter of public debate; and
 - disclosure of the documents may assist public comment on or participation in the debate or discussion.
17. As part of deciding whether to reduce or not impose a charge, I note that paragraph 4.50 of the Guidelines provides that even where there is a general public interest in the release of documents subject to a freedom of information request, it is still open to an agency to impose a charge for the processing of that request. In this regard I have also considered the work involved in processing your request and the extent to which some information in the documents is publicly available.
18. In considering the resource implications for the Department in processing your request, the Department was required to undertake extensive searches to locate documents relevant to your request and the Information Law Team undertook consultations with departmental officers about the content and the nature of the documents. In addition, as part of the decision making process, the Department is required to examine and consider the documents and prepare the decision on access, which (as discussed under the Calculation of the Charge above) is estimated to take 19.5 hours. Accordingly, there is a significant amount of work which remains to be done in processing this request.
19. I also note that some documents contain extracts of publicly available material. I do not consider that release of this material would add further information about penalty rates in the hospitality and tourism industries to the information which is already in the public domain.
20. On balance, and after taking all of the above into account, I have decided that while there is a general public interest in disclosing the documents, because of the resource implications for the department in processing your request and the extent to which certain information contained within the documents is publicly available, a total waiver of the Charge is not appropriate.
21. Accordingly I have decided to reduce the Charge by 50 percent to \$220.00 (the Reduced Charge).

22. Finally, I note that processing charges are designed to be a contribution to the cost of processing requests for documents under the FOI Act and are not reflective of the full costs associated with the processing of a request.

Options to proceed with your request

23. In order for your request to continue to be processed, you are required to respond in writing in accordance with one of the following options:
- a. pay the Reduced Charge (either deposit or in full); or
 - b. request a review of this decision.
24. Alternatively, if you wish to withdraw your request at this time, you may do so in writing.

Option A – pay the Reduced Charge

25. As the Reduced Charge is greater than \$100.00, you are required to pay a deposit of 25 per cent (\$55.00) within 30 days of receiving this notice. You may, of course, elect to pay the Reduced Charge in full at this point.
26. The amount due should be paid by cheque or money order and made out to the Collector of Public Monies – Department of Employment. The cheque or money order can be sent to the following address:

Information Law Team
Department of Employment
C12MT1
GPO Box 9880
CANBERRA ACT 2601

Option B – request a review of this decision

27. Your rights of review of this decision are outlined in **Attachment A**.
28. Should you have any queries, please contact me via email at foi@employment.gov.au.

Yours sincerely



Shari Beaumont
Principal Government Lawyer
Information Law Team
Corporate Legal
9 May 2014

Attachment A

Your rights of review regarding my decision

Internal Review

Section 54 of the FOI Act gives you the right to apply for an internal review of this decision. Any such review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of a decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular format is required but it will help the new decision-maker if you state clearly why you consider the decision should be reviewed. Please send your application by post or email as follows:

Post: Information Law Team
Location Code: C12MT1- LEGAL
GPO BOX 9880
CANBERRA ACT 2601
Email: foi@employment.gov.au

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek review of the decision.

If you wish to have the decision reviewed by the AIC you must apply for the review, in writing or by using the online merits review form available on the AIC's website at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the AIC your application should include a copy of this letter and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

Applications for review or complaint can be lodged in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 2999, Canberra ACT 2601
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3, 175 Pitt Street
Sydney, NSW 2000

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.

The Commonwealth Ombudsman

You can 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.

A complaint to the Commonwealth Ombudsman may be made orally or in writing. The Ombudsman may be contacted for the cost of a local call from anywhere in Australia on telephone 1300 362 072.

