



Australian Government

Department of Health

Department Reference: FOI- 1375

Mr Lindsey Stewart

Via email: foi+request-5727-f815adba@righttoknow.org.au

Dear Mr Stewart

NOTICE OF DECISION: LIABILITY TO PAY A CHARGE

I refer to your request of 21 October 2019 to the Department of Health (department) seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

' all correspondence between the the Health department/Minster Hunt and call My Doctor Pty Ltd'

On 18 November 2019 the department sent you a Notice of Liability to Pay a Charge (charges notice). You responded on 23 November 2019, advising you contend the charge should not be imposed on the basis you are an Australian Citizen and will not pay.

On 26 November 2019 the department replied to your email advising that in order to contest the charge and seek a waiver you must give reasons in accordance with section 29(1)(f)(ii) of the FOI Act.

On 10 December 2019 the department emailed you again, advising you must provide reasons for seeking a waiver of the charge. The department has not received a response from you to date.

I am authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

Decision

I am writing to notify you I have decided to impose the charge in full.

Reasons

In my view, based on the information available to me, imposing the charge would not cause you financial hardship and the giving of access is not in the general public interest, or in the interest of a substantial section of the public.

Prima facie position

Charges should fairly reflect the work involved in providing access to documents on request (IC guidelines at [4.5]).

The prima facie position is that charges should be imposed 'so that applicants contribute to the cost of processing all their requests.' (*Re Herald and Weekly Times & Department of Finance and Administration* [2000] AATA 506 at [47]).

Section 3(4) of the FOI Act provides that the functions and powers under the FOI Act should be 'performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.'

Considerations for imposing the charge

In accordance with section 29(5) of the FOI Act I may take into account the following when determining whether to impose, waiver or reduce the charge:

- (a) 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; and
- (b) 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

As you have not claimed and not provided evidence of financial hardship, I find that the charge cannot be reduced or waived on that basis.

The general public interest and public interest factors

Giving of access will be in the public interest where it will be of benefit to the public at large. It is not enough that the information in the documents sought is interesting or of curiosity value to the public at large. It is also not sufficient that the documents are of benefit to the applicant.

The documents you are seeking relate to correspondence between the department/Minister Hunt and a specific entity "Call my Doctor Pty Ltd".

The specific subject matter of this request is likely to address a specific matter, as opposed to a broader public health issue. Information contained in the documents is not already publicly available and there is little to no media interest or attention on the topic.

Further, you have not provided any evidence to indicate the subject matter is a matter of public interest and that disclosure would facilitate access by the public generally or a substantial sector of the public. You also have not provided any evidence regarding how disclosure would benefit you.

Whether disclosure is in the general public interest requires consideration of whether disclosure of the document would benefit the public. In considering this, I have taken into account the following factors in favour of disclosure:

- The public interest in persons exercising their right to access information in the possession of government as recognised in the FOI Act;
- The public interest in promoting accountability and transparency in government operations; and
- Whether the documents relates to a matter of public debate, the disclosure of which would assist public comment or participation.

I have taken into account the following factors which suggest disclosure would not benefit the public:

- The risk of prejudice to the government's capacity to effectively and efficiently undertake its functions if the information is disclosed; and
- Disclosure may unreasonably disclose the personal information or business affairs of third parties.

On balance, I consider that there are sufficient grounds to justify imposing the charge of \$862.05. I note that my decision on public interest goes only to the question of whether the charges should be imposed, and not to the issue of whether the documents should ultimately be disclosed.

Effect of my decision

My decision means you are required to pay a charge of \$862.05. Before the processing of your request may continue to be processed, you must pay a deposit of \$215.51.

Please note that until you pay \$215.51, your request remains on hold. The processing of your request will resume upon payment of that amount. Please note that, when a decision is made on your request, you will not receive access to any documents the decision-maker decides to release to you until the balance of the charge is paid.

If, within 30 days from the date of this notice, payment of \$215.51, is not received or you have not sought a review of my decision, your freedom of information request will be considered to have been withdrawn.

Where you choose to pay by cheque (personal or bank) or money order it should be sent to the following:

Mail:	FOI Unit (MDP 516) Department of Health GPO Box 9848 CANBERRA ACT 2601
-------	---

Where you wish to pay by credit card you should contact the department's FOI Unit on (02) 6289 1666 to be further advised.

Access to documents released to you by the decision maker will be provided when the balance of the outstanding charges is received and receipted by the department.

Review rights

Pursuant to s53A(e) of the FOI Act, a decision under s29 relating to the imposition of a charge or the amount of a charge is an access refusal decision.

You have a right to seek an internal review or Information Commissioner Review of the access refusal decision. The decision maker on review can decide whether the charge was correctly assessed, and whether it should be reduced or waived.

Internal review

Under section 54 of the FOI Act, you may apply to the department for an internal review of my decision. The internal review application must be made in writing within 30 days of the date of this notice (or such further period as the department allows). Where possible please provide reasons why you consider review of the decision is necessary. The internal review will be carried out by another officer of this department within 30 days. An application for an internal review should be addressed to:

Email: FOI@health.gov.au

OR

Mail: FOI Unit (MDP 516)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

Information Commissioner Review

Section 54L of the FOI Act provides that you may apply to the Australian Information Commissioner to review my decision. An application for review must be made in writing within 60 days of this notice.

The Australian Information Commissioner can be contacted by:

Email: enquiries@oaic.gov.au
Phone: 1300 363 992

More about the Information Commissioner review is available on the Office of the Australian Information Commissioner (OAIC) website at:

<https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>

You may also make a complaint to the Information Commissioner about action taken by the department in relation to your application. Further information can be obtained from the OAIC website.

Relevant provisions

The FOI Act, including the provisions referred to in this letter, can be accessed from the Federal Register of Legislation website:

<https://www.legislation.gov.au/Details/C2019C00288>

Publication

You should be aware where a decision is made to release documents to you, the department may also publish the released material on its Disclosure Log. However, the department will not publish information (such as personal or business information) where it would be unreasonable to do so.

For your reference the department's Disclosure Log can be found at:

<https://www.health.gov.au/resources/foi-disclosure-log>

Contacts

If you require clarification of any of the matters discussed in this letter you should contact the Freedom of Information Unit on (02) 6289 1666 or at FOI@health.gov.au.

Yours sincerely



Yvette Martin

Acting Director - Freedom of Information
Legal Advice and Legislation Branch

19 December 2019