



Australian Government

Department of Immigration and Border Protection

16 May 2014

In reply please quote:

FOI Request FA 14/04/00348

File Number ADF2014/12160

Mr Ben Fairless
Right To Know

Copy sent by email to: foi+request-581-fl3effa@righttoknow.org.au

Dear Mr Fairless

Freedom of Information request – Notice of charge decision following applicant contention that charge be reduced or not imposed (s 29(8))

This notice of decision refers to your request received by the Department of Immigration and Border Protection (the Department) on 6 April 2014 seeking access under the *Freedom of Information Act 1982* (the Act) to the following documents:

I request a copy of all documents held by DIBP that either involve, discuss, make mention of or have relevance to, the communications which were initiated from the DIBP's Twitter account (@DIBPAustralia) which are sent to or contain the phrase "@VanessaPowell25"

This request specifically includes, but is not limited to:

- *"Direct Messages" sent between any of DIBP's official or unofficial Twitter accounts and @VanessaPowell25*
- *Documents created or held by DIBP in relation to the alleged "offensive remark" mentioned in the Tweets from @DIBPAustralia to @VanessaPowell25 on the 4th of April 2014*
- *Copies of any complaint made by any employee's, contractors, or anyone associated with DIBP.*

I refer to your email of 7 May 2014 in which you requested a waiver of charges pursuant to s 29(5)(b), on the grounds of public interest.

I am an officer authorised under s 23(1) of the Act to make decisions in relation to FOI requests and I am writing to advise you of my decision.

I have decided not to vary the original assessment of the charge. The amount you are liable to pay is **\$494.95**. The reasons for my decision under s 29(4) are set out below.

people our business

6 Chan Street Belconnen ACT 2617

PO Box 25 BELCONNEN ACT 2616 • Telephone 02 6264 1111 • Facsimile 02 6225 6970 • Website: www.immi.gov.au

Reasons for my decision

Discretion to reduce or not to impose a charge

Section 29(4) of the Act provides:

Where the applicant has notified the agency or Minister, in a manner mentioned in subparagraph (1)(f)(ii), that the applicant contends that the charge should be reduced or not imposed, the agency or Minister may decide that the charge is to be reduced or not to be imposed.

In deciding whether to exercise the broad discretion in s 29(4), as the decision maker I may consider any relevant matter. However, s 29(5) provides that I must consider whether giving access to the documents in question is in the general public interest, or in the interest of a substantial section of the public; and whether the charge would cause financial hardship.

Would payment cause financial hardship?

As you have not contended that payment of the charge would cause you financial hardship, I have not considered this issue further.

Is giving access to the document in the public interest?

Section 29(5)(b) of the Act requires me to consider 'whether the giving of access to the document in question is in the general public interest or in the interests of a substantial section of the public'.

The Australian Information Commissioner has issued Guidelines under s 93A of the FOI Act to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. Part 4 of the Guidelines explains the factors I must take into account when considering the public interest in charges decisions.

As the Guidelines explain, the issue is not whether it is in the public interest to reduce or not impose a charge, nor whether it is in the public interest for a particular applicant to be granted access to a document. While you (the FOI applicant) may benefit from disclosure of the documents, the question is whether there is a benefit that will flow more generally to the public or to a substantial section of the public.

In deciding whether the giving of access to documents is in the general public interest or in the interest of a substantial section of the public I have considered both of the content of the documents and the context of their release.

I have considered the following:

- whether giving access to the document in question is in the general public interest or in the interest of a substantial section of the public;
- the arguments you have put forward in your email of 7 May 2014 as to why the charge should be waived;
- whether disclosure of a document would advance the objects of the Act;

- whether you can be expected to derive a commercial or personal benefit or advantage from being given access to the documents and if it is reasonable to expect you to meet all or part of the charge;
- whether the documents are primarily of interest only to you and are not of general public interest or of interest to a substantial section of the public; and
- whether the information in the documents has already been published by the department and the documents do not add to the public record.

I have determined that the disclosure of the documents in question is not in the general public interest or in the interest of a substantial section of the public, for the purpose of a decision under s 29(5)(b) of the Act. The reasons for this conclusion are set out below.

You argue in your email of 7 May 2014 that *the charges should not be imposed as providing the documents is in the general public interest, and in the interest of a substantial section of the public*. You provide in support details of the media reaction to the department's tweets to a member of the public to remove an offensive comment about a departmental staff member from her personal Facebook page.

I am of the view that the public interest test is not satisfied. Just because the department's tweets were shared and/or forwarded and/or replied to by other twitter users, caused the department to become a 'trending topic' and/or led to media coverage (social media and otherwise), does not equate to there being a public interest, for the purposes of making a decision on charges. There may very well be/have been interest in the department's handling of the situation, however this does not, in my view, translate to you not being liable to pay the charges for the processing of this request.

Further, there is no presumption that the public interest test is satisfied (and that the charge should accordingly be waived) by reason that you lodged your FOI request through 'Right to Know', a public website that facilitates members of the public to lodge FOI requests with various Commonwealth agencies, allows members of the public to follow the status and progress of requests, discloses all correspondence between the department and FOI applicants and provides members of the public an opportunity to provide comments on the processing of FOI requests.

Exercising the discretion

As the Guidelines explain, even if I were satisfied that a public interest purpose for disclosure had been established (which I am not), it remains open to me, as the authorised FOI decision maker to impose a charge.

For the above reasons I have decided not to vary the original assessment of the charge.

Options to reduce charges

As noted in my initial charges notice dated 6 May 2014, there is a significant amount of duplication of certain emails in the email trails. If you were to remove duplicate emails from the scope of your request, the charges for processing this request would reduce.

Please let me know if you are happy for duplicates to be removed, so that I can reassess the documents for charges. If you do not wish to make any changes to your request, the following paragraphs outline the next steps in processing this request.

Next steps in processing your request

As the charge exceeds \$100, you must pay a 25% deposit (**\$123.74**), in accordance with regulation 12 of the *Freedom of Information (Charges) Regulations 1982* (the FOI Charges Regulations).

The deposit will be refunded if the Department fails to make a decision on your request within the statutory time limit.

Please note that if you choose to pay the deposit only, while the Department will be under an obligation to provide you with the decision by the due date, the documents will not be provided until you have paid the balance of the charges (s.11A(1)(b) of the Act and Regulation 11 of the FOI Charges Regulations).

How to pay the charge

The deposit can be paid by cheque, money order, credit card or Electronic Funds Transfer (EFT).

Cheques and money orders should be made payable to "Collector of Public Monies DIBP" and sent to:

FOI & Privacy Policy Section
Department of Immigration & Border Protection
PO Box 25
BELCONNEN ACT 2616

If you wish to pay by credit card, please fill out the attached credit card authorisation form and forward to FOI & Privacy Policy Section at the above address, or email to foi@immi.gov.au.

If you wish to pay by Electronic Funds Transfer (EFT) the department's bank account details are as follows:

Bank:	CBA
BSB:	062987
Account Number:	10016044
Account Name:	DIBP Official Administered Direct Credit Receipts Account

When making the transfer you will need to quote the number of your request – FA 14/04/00348 - so that your payment can be identified by our Finance area. Failure to do so may result in payments not being identified as FOI related and could result in processing delays.

Please advise FOI when you have made the payment made by direct credit so that we can contact the Finance area and they can issue a receipt. You should also be aware that payments by direct credit are not processed in real time. There is at least a one day delay between somebody paying money into the department's account and notification of the payment via our bank account statement.

Time in which to respond

Under the Act you have 30 days from the date of this notice to provide the Department with a response to my decision and either agree to pay the charges or seek an internal review of my decision. Your full review rights are set out in the next section, headed 'Review Rights'.

Therefore, you must provide the Department with a written response as to how you wish to proceed by close of business 15 June 2014. However, as this date falls on a non-working day, s.36(2) of the *Acts Interpretation Act 1901* provides that the latest date you may respond is the next working day, which is close of business **Monday, 16 June 2014**.

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Department my decision. Any request for internal review must be provided to the Department by the date set out above. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by an officer other than the original decision-maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

Freedom of Information
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi@immi.gov.au

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at www.oaic.gov.au.

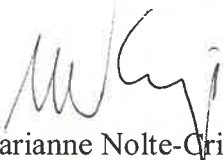
How to make a complaint about the handling of this FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the Act. Information about how to submit a complaint is also available at www.oaic.gov.au.

Contacting the FOI Section

If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely



Marianne Nolte-Crimp
Authorised FOI Decision Maker
FOI & Privacy Policy Section
Ministerial, Executive & External Accountability Branch
Department of Immigration and Border Protection

Email foi@immi.gov.au