



Australian Government
Department of Immigration and Border Protection

1 May 2014

FOI Request FA 14/04/00800
File Number ADF2014/13356

Mr Ben Fairless
via email to: foi+request-587-c19fe476@righttoknow.org.au

Dear Mr Fairless

Freedom of Information request – notice that you are liable to pay a charge (s.29)

This letter refers to your request received on 11 April 2014 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following document:

'...a full copy of the email sent from Angela O'Neill to Linda ROSSITER, Janelle RAINERI, Rowan PATTERSON, Steven HOCKING, and Ashley SMITH with the subject "Cases to be allocated and new processes for RTK detention log requests". This email was sent on Thursday, 15 August 2013.'

I am writing to advise you of my decision that you are liable to pay a charge for processing this request. I am an officer authorised under s.23(1) of the FOI Act to make decisions in relation to FOI requests, including the decision to impose a charge.

As provided under s.29 of the FOI Act and the *Freedom of Information (Charges) Regulations 1982* (the Regulations), I have undertaken a preliminary assessment of the amount of charges you are liable to pay and have assessed that to be \$221.81.

Basis for my preliminary assessment of the charge

Document estimate

One document falls within the scope of your request. I note that the document contains the personal information of 6 departmental clients other than you. I am satisfied that these clients would need to be consulted prior to me making any decision about the release of this document. As per the routine processes, I have included 2 hours for consultation with each client in the estimate, totalling 12 hours of consultation time @ \$20 per hour.

One option to reduce the current estimate would be for you to remove departmental clients' personal information from the scope of your request.

Processing charges

Search and retrieval		
Task	Time (hours)	Cost @ \$15/hr
Search and retrieval of relevant electronic document	0.17	\$2.50
Search and retrieval of relevant pages in file	0.75	\$11.25

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Search and retrieval subtotal	0.97	\$14.50
Decision making		
Task	Time (hours)	Cost @ \$20/hr
Examination of documents	0.17	\$3.33
Preparation of documents for release	0.17	\$3.33
Consultation with third parties	12.00	\$240.00
Preparation of notice of access decision	3.03	\$60.64
Decision making subtotal (before deduction of 5 free hours)	15.37	\$307.31
Decision making subtotal (after deduction of 5 free hours)	10.37	\$207.31
Estimated totals and deposit		
Estimated total		\$221.81
Deposit (25% of full charge)		\$55.45

Option to pay deposit rather than full charge

As the estimated charge exceeds \$100, you have the option of paying a deposit of \$55.45 and then paying the remainder of the charge after the decision has been provided to you. The FOI Act provides that the Department must provide you with the decision by the due date. However, the FOI Act and Regulations provide that the Department is not obliged to provide the relevant documents (if any are released) until the remainder of the charge has been paid.

The time you have to respond and what you need to do

The FOI Act provides you with 30 days from the date you are notified of this notice (ie by Saturday 31 May 2014), to respond to this notice. However, as this date falls on a non-working day, s.36(2) of the *Acts Interpretation Act 1901* (AI Act) allows you to respond on the next working day, which is **Monday 2 June 2014**. Your response must be in writing. In responding, you may 'contend' that I should either reduce or 'not impose' the charge. If you decide to do so, please set out the reasons why you believe that I should reduce or waive the proposed charge.

When considering your contentions, I must take into account the two factors in s.29(5) of the FOI Act, which are:

- (a) whether the payment of the charge (or part of it) would cause you financial hardship; and
- (b) whether access to the documents in question would be in the public interest, or in the interests of a substantial section of the public.

Alternatively, you may 'agree' to pay the charge, by paying the requested deposit or the charge in full.

Refund of payment or deposit

Any amount that you pay will be refunded if the Department fails to make a decision on your request by the 'due' date as provided in s.15(5)(b) of the FOI Act. I note that this initial 30 days can be extended under various provisions of the FOI Act.

Current due date and suspension of processing period

I note that the current due date for your request, under s.15(5)(b) of the FOI Act is Sunday 11 May 2014. As this is a non-working day, s.36(2) of the AI Act provides that the latest date the Department can provide you with the decision is **Monday 12 May 2014**.

However, under s.31(2) of the FOI Act, the period for processing your request is suspended from the day that you are deemed to have been 'notified' of the estimated charge (today) and resumes on:

- the day you indicate that you 'agree' to pay the charge or

- the day on which this agency makes a decision not to impose a charge.

This means that the 'FOI clock' has stopped and the current due date for this request is a 'nominal' date only. The due date will change once you either agree to pay the charge or the Department decides not to impose the charge.

How to pay

You will find the methods of payment set out in the email that this notice is attached to.

Summary

To recap, by close of business **Monday 2 June 2014** you must do one of the following things:

- agree to pay the full charge or the deposit; or
- contend that the charge should be reduced or not imposed and explain your reasons; or
- withdraw your request.

Please note that if you do not provide a written response by close of business Monday 2 June 2014 your request will be deemed to have been withdrawn by you under s.29(2) of the FOI Act.

Yours sincerely



Angela O'Neil
Authorised decision maker
FOI & Privacy Policy Section
Ministerial, Executive and Accountability Branch
Department of Immigration and Border Protection
Email foi@immi.gov.au

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- ✓ Attachment A – extract of relevant provisions of the FOI Act

ATTACHMENT A – Extract of relevant legislation

15 Requests for access

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Timeframes for dealing with request

- (5) On receiving a request, the agency or Minister must:
- (a) as soon as practicable but in any case not later than 14 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified that the request has been received; and
 - (b) as soon as practicable but in any case not later than the end of the period of 30 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified of a decision on the request (including a decision under section 21 to defer the provision of access to a document).
- (5A) In making a decision on a request, the agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of section 93A.

Extension of processing period to comply with requirements of section 26A, 26AA, 27 or 27A

- (6) Where, in relation to a request, the agency or Minister determines in writing that the requirements of section 26A, 26AA, 27 or 27A make it appropriate to extend the period referred to in paragraph (5)(b):
- (a) the period is extended by a further period of 30 days; and
 - (b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been so extended.

Extension of processing period to consult foreign entity

- (7) Subsection (8) applies if, in relation to a request, the agency or Minister determines in writing that it is appropriate to extend the period referred to in paragraph (5)(b) so that the agency or Minister can:
- (a) consult one of the following:
 - (i) a foreign government;
 - (ii) an authority of a foreign government;
 - (iii) an international organisation; and
 - (b) determine whether the document that is the subject of the request is an exempt document under subparagraph 33(a)(iii) or paragraph 33(b).
- (8) If this subsection applies:
- (a) the period referred to in paragraph (5)(b) is extended by a period of 30 days; and
 - (b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been extended.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope

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of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

29 Charges

- (1) Where, under the regulations, an agency or Minister decides that an applicant is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document, the agency or Minister must give to the applicant a written notice stating:
- (a) that the applicant is liable to pay a charge; and
 - (b) the agency's or Minister's preliminary assessment of the amount of the charge, and the basis on which the assessment is made; and
 - (c) that the applicant may contend that the charge has been wrongly assessed, or should be reduced or not imposed; and
 - (d) the matters that the agency or Minister must take into account under subsection (5) in deciding whether or not to reduce, or not impose, the charge; and
 - (e) the amount of any deposit that the agency or Minister has determined, under the regulations, that the applicant will be required to pay if the charge is imposed; and
 - (f) that the applicant must, within the period of 30 days, or such further period as the agency or Minister allows, after the notice was given, notify the agency or Minister in writing:
 - (i) of the applicant's agreement to pay the charge; or
 - (ii) if the applicant contends that the charge has been wrongly assessed, or should be reduced or not imposed, or both—that the applicant so contends, giving the applicant's reasons for so contending; or
 - (iii) that the applicant withdraws the request for access to the document concerned; and
 - (g) that if the applicant fails to give the agency or Minister such a notice within that period or further period, the request for access to the document will be taken to have been withdrawn.
- (2) If the applicant fails to notify the agency or Minister in a manner mentioned in paragraph (1)(f) within the period or further period mentioned in that paragraph, the applicant is to be taken to have withdrawn the request for access to the document concerned.
- (3) An agency or Minister must not impose a charge in respect of a request for access to a document, or the provision of access to a document, until:
- (a) the applicant has notified the agency or Minister in a manner mentioned in paragraph (1)(f); or
 - (b) the end of the period or further period mentioned in that paragraph.
- (4) 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.

- (5) Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:
- (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.
- (6) If the applicant has notified the agency or Minister in the manner mentioned in subparagraph (1)(f)(ii), the agency or Minister must take all reasonable steps to enable the applicant to be notified of the decision on the amount of charge payable as soon as practicable but in any case no later than 30 days after the day on which the applicant so notified the agency or Minister.
- (7) If:
- (a) that period of 30 days has elapsed since the day on which the agency or Minister was so notified; and
 - (b) the applicant has not received notice of a decision on the amount of charge payable; the principal officer of the agency, or the Minister, as the case requires, is, for all purposes of this Act, taken to have made, on the last day of the period, a decision to the effect that the amount of charge payable is the amount equal to the agency's or Minister's preliminary assessment of the amount of the charge mentioned in paragraph (1)(b).
- (8) If:
- (a) the applicant makes a contention about a charge as mentioned in subsection (4); and
 - (b) the agency or Minister makes a decision to reject the contention, in whole or in part; the agency or Minister, as the case requires, must give the applicant written notice of the decision and of the reasons for the decision.
- Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.
- (9) A notice under subsection (8) must also state the name and designation of the person making the decision and give the applicant appropriate information about:
- (a) his or her rights with respect to review of the decision; and
 - (b) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (c) the procedure for the exercise of those rights;
- including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (10) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (8).
- (11) A notice under subsection (8) is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

31 Decision to impose charge—extended period for processing request

Scope

- (1) This section applies if:

- (a) on a particular day (the *charge notice day*) an applicant in relation to a request receives a notice under subsection 29(1) or (6) to the effect that the applicant is liable to pay a charge in respect of the request; and
- (b) the notice is received before the end of the period (the *processing period*) applicable under paragraph 15(5)(b) in relation to the request (or that period as extended).

Processing period to be calculated disregarding period when charge unpaid

- (2) In working out the length of the processing period (or that period as extended) for the purposes of paragraph 15(5)(b), disregard the number of days in the period starting on the charge notice day and ending on the earliest occurring of the following days:
 - (a) the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations), whether or not the decision to impose the charge has been considered under section 29, or is the subject of a review under this Act;
 - (b) if the amount of the charge is changed under section 29, or following a review under this Act—the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations) as changed following the review;
 - (c) if, under section 29, or following a review under this Act, a decision is made with the effect that the charge is not imposed—the day the applicant is notified of the decision.

Note: A decision under section 29 relating to the imposition of a charge or the amount of a charge may be the subject of an internal review (see Part VI), an IC review (see Part VII) or review by the Tribunal (see Part VIIA).