



Australian Government
Department of Industry

Our ref: DIISR 14/06073

GPO Box 9839
Canberra ACT 2601 Australia
Web: www.innovation.gov.au
ABN: 74 599 608 295

Mr Mark Diamond

By email: foi+request-599-2a78bb47@righttoknow.org.au

Dear Mr Diamond

Freedom of Information Act 1982 – Decision on Charge

I refer to your correspondence received by the Department of Industry (the department) on 26 April 2014, in which you sought access under the *Freedom of Information Act 1982* (the FOI Act) to “...Privacy Impact Assessment for Unique Student Identifier”.

Background

On 12 May 2014, the department notified you of the preliminary estimate of the charge for the processing of your request, being \$127.20.

On 5 June 2014, the department received your request for non-imposition of the charge on public interest grounds.

Decision on Charge

I have decided to reduce the preliminary estimate of the charge by 50% on public interest grounds and impose a charge of **\$63.30** (the Charge).

Reasons for Decision

I have taken the following material into account in making my decision:

- your FOI request dated 26 April 2014;
- the department’s letter dated 12 May 2014, notifying you of the preliminary estimate of the charge;
- your correspondence dated 5 June 2014, seeking non-imposition of the charge on public interest grounds;
- the documents identified as falling within the scope of your request;
- the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982* (the FOI Regulations); and
- Guidelines issued by the Australian Information Commissioner under s93A of the FOI Act (the FOI Guidelines).

Calculation of the Charge

As a preliminary step in my consideration of whether a processing charge should apply to this request, I have re-examined the calculations used to determine the preliminary estimate.

In correspondence dated 12 May 2014, the department advised that there were approximately 63 pages relevant to your request. The charge, totalling \$127.20, was calculated on the following basis:

Search and Retrieval – 0.92 hours at \$15 per hour	\$	13.75
Decision Making Time – 10.36 hours at \$20 per hour	\$	207.15
*Less first 5 hours of decision making time	\$	- 100.00
Subtotal	\$	107.15
Photocopy and Postage	\$	6.30
Total	\$	127.20
Deposit 25% of total	\$	31.80

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

In calculating processing charges for FOI applications, the department applies the relevant provisions of the FOI Act, the Regulations and the Guidelines in relation to the amounts it is permitted to charge. The department calculates the amount it may charge based on:

- the time taken to search and retrieve files containing the documents falling within the scope of the request;
- the number of third parties with whom it will be necessary to consult in the course of making a decision regarding release of the documents;
- the number and size (number of pages) of the documents that have been identified as falling within the scope of the request and the time taken for decision-making in relation to each folio of each document (less the first five hours of decision-making time, which are free of charge); and
- the number of pages requiring redaction (and therefore potentially requiring additional decision-making time).

Factors relevant to the calculation of the charge estimate in this instance included approximately 63 relevant pages which fall within the scope of your request and the need to consult with 2 third parties. Under section 27 and 27A of the FOI Act, the department is required to give the third parties an opportunity to contend that the information is exempt or conditionally exempt. The requirement to consult generally increases the decision-making time associated with processing a request.

Having re-considered the calculation of the preliminary estimate, I consider that the calculation fairly reflects the work involved in processing the request and is a fair contribution towards the cost of processing the request.

Reduction or Non-imposition of the processing charge

Sub-section 29(5) of the FOI Act provides that, without limiting the matters the department 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 the 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

You have not contended that imposition of the charge would cause you financial hardship. In the absence of any information in this regard from you, I have decided that, in this instance, there is no basis upon which a decision not to impose the charge on financial hardship grounds can be made.

Public interest

In your correspondence of 5 June 2014 you submitted the following in support of your request for non-imposition of the charge:

"...First, the implementation of a unique student identifier would entail similar ramifications for personal privacy in respect of sensitive educational information as does the Medicare identifier in respect of sensitive health information or the Tax File Number in respect of employment and taxation (Tax File Number). While there are clear advantages, both to individuals and to the national interest in having each individual's educational information linked by a unique student identifier, there are countervailing threats to personal privacy. No doubt that was the reason for the Department of Industry conducting a privacy impact assessment in the first place. Given that background, it is extraordinary that the Department has not already published the privacy impact assessment of its own volition. Nonetheless, giving access to the document under FOI would rectify the Department's neglect, and serve the same public interest.

With regard to the question of whether giving access to the document would serve the interest of (at least) a substantial section of the public or of only a minor part, it is relevant that the class of people on whom the proposed unique student identifier would have an impact includes:

- . all current and future students*
- . all guardians or parents of students, and . all those who might undertake a course of study in the future even if they are not now doing so.*

It is on that basis that I suggest that your Department should decide not to impose any charge for access".

The decision to reduce or not impose a processing charge requires the department, under paragraph 29(5)(b) of the FOI Act, to 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'. The issue is not whether it is in the public interest to waive or reduce a charge, nor whether it is in the public interest for a particular applicant to be granted access to the document.

In applying the public interest test, it is important to identify the 'general public interest' or the 'substantial section of the public' that would benefit from disclosure. The FOI applicant may benefit from disclosure, but for the purposes of paragraph 29(5)(b), there should also be a benefit flowing more generally to the public or a substantial section of the public. This will ordinarily require consideration of both the content of the documents and the context of their release, for example, whether the documents relate to a matter of public debate or for decision of government.

I have considered the following factors in favour of a reduction or non-imposition of the charge on public interest grounds:

- the connection of the documents to matters that have been a topic of public interest or discussion, and the extent to which disclosure of the documents would better inform the public on those matters; and
- the objects of the FOI Act to increase scrutiny, discussion, comment and review of government activities and promote openness of administration by allowing access to information (including information about public policy) under the FOI Act.

I have also considered the following factors that weigh against reduction or non-imposition of the charge on public interest grounds:

- significant work will be required by the department in retrieving and compiling the information relevant to your request and the time required to make a decision, including consultation with third parties; and
- the document contains information that is already available in the public domain and will not add to the public record.

Taking into account the above factors weighing against disclosure and paragraph 4.46 of the Guidelines which states that the policy of the FOI Act is that charges may be imposed for search and retrieval of information, decision making, electronic production, copying and delivery, I do not consider that a total waiver of the fees would be appropriate.

However, having weighed the factors for and against waiver on public interest grounds, I have decided on balance, that it would be consistent with the objects of the FOI Act to reduce the preliminary estimate of the charge in this instance by 50% to **\$63.30** (the Charge).

Other grounds for reduction

Under Regulation 3 of the *Freedom of Information (Charges) Regulations 1982*, the department has a broad discretion whether to impose a charge for resources expended in processing a freedom of information request.

Subsection 29(4) of the FOI Act also gives the department a general discretion to reduce or not impose a charge which goes beyond matters relating to financial hardship or the public interest.

I note that processing charges are designed to be a contribution to the cost of processing freedom of information requests and do not compensate for the full costs associated with the processing of a request.

Relevantly in this case, there are approximately 63 pages that fall within the scope of your request and consultation with 2 third parties will be required, which will add to the decision-making time allocated to the request.

I also note that in recognition of the general public interest in allowing access to government information, the FOI Act provides for the first five hours of decision making time to be free of charge for all applicants. I note that this discount has been applied to the Charge.

Taking into account the above considerations and my decision to reduce the charge by 50%, I have decided that the charge of \$63.30 is an appropriate contribution towards the processing of your FOI request.

Options to proceed with your request

As previously advised, consultation with third parties is required in relation to this request, due to it covering documents containing information about the business affairs of organisations. In order for your request to continue to be processed, you are required to respond in writing within 30 days of receipt of this notice in accordance with one of the following options:

- A. Pay the reduced charge;
- B. Request a review of the decision to impose the charge; or
- C. Withdraw your request.

Further information on each of these options is set out below.

Option A – Pay the Charge

As the charge is less than \$100 you are required to pay a deposit of \$20 within 30 days of receiving this notice. You may, of course, elect to pay the charge in full at this point.

The amount due should be paid by cheque or money order and made out to the Collector of Public Monies. The cheque or money order can be sent to the FOI team at the following address:

Freedom of Information Team
Department of Industry
GPO Box 9839
Canberra ACT 2601

Option B – Request a review of the decision to impose the Charge

Your rights of review are set out in this letter below.

Option C – Withdraw your request

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

If you fail to notify the department in a manner mentioned above within 30 days of receipt of this notice it will be taken that the request has been withdrawn.

Application for Internal Review

Section 54 of the FOI Act gives you the option to apply for a departmental internal review of my decision. If you make an application for internal review it will be conducted by an officer of the department (other than me) appointed by the Secretary of the department to conduct a review and make a completely fresh decision on the merits of the case.

Application for a review of the decision must be made within 30 days after the day of receipt of this letter. You do not have to pay any fees or processing charges for an internal review. No particular form is required but it would assist the decision maker if you were to set out in the application the grounds on which you consider the decision should be reviewed.

Application for a review of a decision should be addressed to:

FOI Coordinator
Department of Industry
GPO Box 9839
CANBERRA ACT 2601

or by e-mail to: FOI@innovation.gov.au.

If the decision on internal review were not satisfactory to you, you would then be entitled to seek review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time the internal decision is notified, should you take that course.

Review by the Information Commissioner

Alternatively, section 54L of the FOI Act gives you the right to apply for review of my decision by the Information Commissioner. An application for review by the Information Commissioner may be made regardless of whether the decision was the subject of a department internal review. An application for review by the Information Commissioner must be made within 60 days of receipt of this notice. There is no fee for review by the Information Commissioner.

You must apply in writing and you can lodge your application 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

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of this notice and your contact details. You should also set out why you are objecting to the decision.

Complaints to the Information Commissioner

You may complain to the 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. The Information Commissioner will make a completely independent investigation of your complaint. A complaint to the Information Commissioner must be made in writing and can be lodged on line using the IC Complaint Application form on the Information Commissioner's website at www.oaic.gov.au

Should you have any queries in relation to this matter please contact the FOI Coordinator on (02) 6102 8104 or by e-mail: FOI@industry.gov.au.

Yours sincerely



Jason Coutts
General Manager
VET Data Infrastructure
Skills Division

18 June 2014