



By email: foi+request-613-e0f28353@righttoknow.org.au

Dear Mr Dickson

1. I refer to your request received by the Department of Education (**the department**) on 15 May 2014 for access under the *Freedom of Information Act 1982 (FOI Act)* to:

"Any and all internal correspondence, ministerial briefing papers, policy documents, memos or file notes relating to any proposal to amend the payment thresholds and payment rates for the Higher Education Loan Program (HELP) between 8 September 2013 and 14 May 2014".

2. On 6 June 2014 you advised the department that you wished to revise the scope of your request as follows:

"Internal correspondence, ministerial briefing papers, policy documents, memos or file notes excluding documents prepared for Cabinet relating to any proposal to amend the payment thresholds and payment rates for the Higher Education Loan Program (HELP) between 1 December 2013 and 1 May 2014".

Background

3. On 10 June 2014 the department advised you of the preliminary estimate of the charge for processing your request, being \$545.00 (**the Charge**).
4. On the same day, the department received your written request for reduction or non-imposition of the Charge on financial hardship grounds pursuant to section 29 of the FOI Act. Specifically, you made the following submissions in support of your request for reduction or non-imposition of the Charge:

"I am requesting that the charge of \$545.00 be reduced or not imposed under Subsection 29(5) of the FOI Act on the grounds of:

1. *financial hardship; and*
2. *that the documents are of interest to a substantial section of the public.*

I wish to apply on the grounds of financial hardship because I am a university student with very little financial resources. If I were to pay this \$545.00 charge to have access to the documents, it would have a very severe impact on my living standards and my ability to pay the rent for my one bedroom apartment, and I would have to consider other options in relation to food and transport. I am not exaggerating these claims – a \$545.00 hit to a nineteen year old's bank account would be large.

On the second point, namely that these documents are of interest to a substantial section of the Australian community, there are over 1.5 million former Australian university students who have a HELP debt. Without going into the merits of this particular policy change, I submit to you that this is a large section of the Australian community who would be impacted by the policy change I have referred to in my FOI request".

5. I am authorised to make decisions under the FOI Act and the following is my decision in relation to your request for reduction or non-imposition of the Charge, and the reasons for my decision.

Decision

6. I have decided to reduce the Charge by 50% to \$272.50 (**the Reduced Charge**).

Reasons for decision

7. I have taken the following material into account in making my decision:
- the department's letter dated 10 June 2014 notifying you of the Charge;
 - your email received on 10 June 2014 seeking reduction or non-imposition of the Charge;
 - the documents falling within the scope of your request;
 - the FOI Act;
 - the *Freedom of Information (Charges) Regulations 1982* (**the Regulations**); and
 - guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**the Guidelines**).

Calculation of the Charge

8. As a preliminary step in my consideration of whether a processing charge should apply to this request, I have examined the calculations which were used to determine the Charge.
9. In its letter dated 10 June 2014, the department advised that it has in its possession approximately 30 documents containing an estimated 125 pages relevant to your request. The Charge, totalling \$545.00, was calculated as follows:

Search and retrieval time: 15 hours, at \$15.00 per hour:	225.00
Decision-making time: 21 hours minus the first 5 hours* at \$20.00 per hour:	320.00
TOTAL	\$545.00

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

10. In calculating a processing charge for a freedom of information request, the department applies relevant provisions of the FOI Act, the Regulations and the Guidelines in relation to the amount it is permitted to charge. The department calculates the amount it may charge based on:
- the time taken to search for, and retrieve, files containing documents that fall 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 (volume) 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 page of each document (less the first five hours of decision-making time, which are free of charge); and
 - the number of pages considered sensitive, requiring redaction (potentially requiring extra decision-making time).
11. The department enters the information regarding the number and nature of the documents into a calculator provided by the Australian Government Solicitor. While 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. The decision-maker for the preliminary estimate of the charge then

applied her own experience to evaluate the reasonableness of the amount calculated and, in my view, the Charge was assessed correctly in the circumstances.

Reduction or non-imposition of the Charge

12. 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

13. On the basis of your submissions dated 10 June 2014 (as set out at paragraph 4 of this decision), I have decided that a reduction of the Charge for reasons of financial hardship is appropriate in the circumstances.

Public interest

14. Under paragraph 29(5)(b) of the FOI Act 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. This means that there must be a general benefit flowing generally to the public or a substantial section of the public, following disclosure of the documents in question.
15. The Guidelines also clarify, at paragraphs 4.54 and 4.55, that the question to be considered by the decision maker is not whether it is in the public interest for the Charge to be reduced or not imposed, nor whether it is in the public interest for a particular applicant to be granted access to a document. Rather, the decision maker must identify the 'general public interest' or the 'substantial section of the public' that would benefit from the disclosure of the documents.
16. Having regard to paragraph 4.58 of the Guidelines I consider that the following factors favour disclosure of the documents falling within the scope of your request:
- whether the documents relate to a matter of public debate, or a policy issue under discussion within an agency, and disclosure of the documents would assist public comment on or participation in the debate or discussion; and
 - whether the documents relate to an agency decision that has been a topic of public interest or discussion, and disclosure of the documents would better inform the public as to why or how a decision was made, including highlighting any problems or flaws that occurred in the decision making process.
17. I consider that there is a general public interest in documents pertaining to a proposal to amend the payment thresholds and rates for the Higher Education Loan Program (HELP). I also consider that there would be a benefit flowing to the general public, or at least a substantial section of the public, from the disclosure of documents relating to this issue, which is currently the subject of public debate.
18. While release of the documents falling within the scope of the request may add to public debate and commentary on any proposal to amend HELP payment thresholds and rates, I have also considered the resource implications for the department in processing your request.

19. Having reviewed the documents falling within the scope of your revised request I can confirm that some of the documents contain material created by, or originating from, the Department of Finance and Deregulation (**DoFD**) and the Australian Government Actuary (**AGA**). As such, the department is required to consult with both DoFD and the AGA to obtain their views on the potential release of material concerning those Commonwealth entities. I estimate that consultation with DoFD and AGA is likely to take approximately two hours per consultation, but note that no additional time is granted under the FOI Act for an agency to consult with other Commonwealth entities.
20. I can also confirm that a more detailed review of the documents undertaken recently has identified approximately 60 additional pages falling within the scope of your request, bringing the total number of pages falling within scope to around 180. This means that additional time will be required to schedule and examine those pages and make a decision on access, but this added time was not factored into the preliminary estimate of the Charge, and no charge is being imposed by the department in respect of these additional pages.
21. Finally I note that, as charges imposed for processing FOI requests are intended to be a contribution towards the cost of processing such requests, they do not compensate the department for the full cost recovery associated with the processing of a request.
22. Accordingly, and taking all of the above into account, I have decided that a 50 % reduction of the Charge is appropriate in the circumstances, as it balances the general public interest in the documents with the resource implications for the department.

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 in full or the required deposit); or
 - (b) request a review of the decision to impose the Reduced Charge.
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 exceeds \$100, you are required to pay a deposit of \$68, which is 25% of the total amount, within 30 days of receiving this notice. You may, of course, elect to pay the Reduced Charge in full at this point.

Option B – request a review of the decision to impose the Reduced Charge

26. I have enclosed information about your rights of review under the FOI Act at **Attachment A**. Please contact me on (02) 6240 2570 if you would like to discuss this matter.

Yours sincerely



Alexandra Brown
Senior Government Lawyer
Child Care, Corporate and External Review Legal Branch
Legal and Compliance Group

10 July 2014

Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for an internal review of this decision. The 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 the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Post: The FOI Coordinator
Child Care, Corporate and External Review Legal Branch
Legal and Compliance Group
LOC: C12MT1 - LEGAL
GPO BOX 9880
CANBERRA ACT 2601

Email: foi@deewr.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 a review of this 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 decision 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

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.

