



## Administrative Appeals Tribunal

FOI ref: 2020/0016

18 May 2020

Mr John Smith

By email: [foi+request-6163-98f1799f@righttoknow.org.au](mailto:foi+request-6163-98f1799f@righttoknow.org.au)

Dear Mr Smith,

### **Notice of charge decision following applicant contention that charge be reduced or not imposed (s 29(8))**

I refer to your email of 16 April 2020 in which you requested a waiver of charges pursuant to section 29(5)(b) of the *Freedom of Information Act 1982* (FOI Act), on the grounds of public interest.

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

I have decided to vary the original assessment of the charge by reducing it by \$195. The amount you are liable to pay is \$6,023.

The reasons for my decision under section 29(4) are set out below.

#### ***Reasons for my decision***

##### *Refined request*

On 16 April 2020 you contended that the charge of \$6,218 was incorrectly assessed because you had further revised your request on 26 March 2020. The AAT confirms that no correspondence was received by you in relation to this request on 26 March 2020 therefore our assessment of the charge has not changed and is based on your request as refined by your email of 18 March 2020.

##### *Location of records*

You also stated in your email that the assessment of the charge is based on inefficient of record keeping practices at the AAT.

According the FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC), an agency can charge for 'the time spent ... in searching for or retrieving the document'. This encompasses time spent:

- consulting relevant officers to determine if a document exists
- searching a file index to establish the location of a document
- searching a file to locate a document
- physically locating a document and removing it from a file

The underlying assumption in calculating search and retrieval time is that an agency should maintain a high quality record system. The AAT maintains such a system suited to its function of reviewing administrative decisions and corporate support of that function.

Search and retrieval time is to be calculated on the basis that a document will be found in the place indicated in the agency's filing system (regulation 5(2)(a)) or, if no such indication is given, in the place that reasonably should have been indicated in the filing system (regulation 5(2)(b)). Time used by an officer in searching for a document that is not where it ought to be, or that is not listed in the official filing system, cannot be charged to an applicant.

I have estimated the time needed for the search and retrieval of the requested documents and found that it would take approximately 13 hours. This is based on a search for documents in the place where the documents ought to be, in the official filing system. For example, it involves a search of:

- the AAT's official financial database for a report that details the amount the AAT spends on the procurement of labour hire staff for the 2019 calendar year;
- the email accounts of both Ms Clemens and Mr Sutton using key words and by refining searches to the date ranges specified in the request;
- the archived tapes for the emails of both Ms Clemens and Mr Sutton;
- the AAT's contract database for a copy the contracts for the requested entities;
- the AAT's register of policies and procedures.

A large proportion of the charge for search and retrieval is allocated to the collation of emails, contracts and reports, including printing, sorting and assessment of scope. You have asked specifically for *any* email correspondence between two AAT officers and labour hire agencies and *any* emails mentioning the public service code of conduct. These documents will be properly located in the mailboxes of the two officers. While copies of some documents may also be properly located on other corporate files, this will not include documents that do not need to be retained by the agency and you have asked for *any* documents. It follows that the email accounts are the correct repositories. Moreover, your request, as refined on 18 March 2020, specifically includes documents held in the deleted/archived emails of the two officers; the search and retrieval in the estimated charge time includes the technical recovery of those emails from back-up tapes.

The officers, whose emails you request, are likely to have emails including the search terms 'section 6 of the public service act' or 'public service code of conduct' that are unrelated to contract labour firms. The identification of emails within the scope of your request, collation, consultation and redaction of these emails is included in the time charged.

You have also asked that any charge be waived, as you consider release of the documents you have requested to be in the public interest.

Section 29(5) of the FOI Act provides that an agency, when determining whether or not to reduce or not to impose a charge, must take into account the following:

- (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.

My considerations of these are provided below.

### ***Financial hardship***

Under the FOI Act, I am required to take into account whether the payment of the charge, or part of it, would cause financial hardship to you. Financial hardship is defined in the FOI Guidelines as:

*Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself or your family, or other people for whom you are responsible.*

As you have not relied on this ground in your submission of 16 April 2020, I have placed little weight on this. Without seeing evidence of financial hardship or an argument in support of this contention, I have concluded that the payment of this charge would not cause you financial hardship.

### ***Public interest***

Section 29(5)(b) of the FOI Act requires me to address 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.

In your email of 16 April 2020, you stated that:

*...the fee ought to be waived in this instance. Labour hire usage throughout the APS is a matter of significant public concern and debate, I ask that the processing charge in this instance be waived. The attached links demonstrate that fact.*

Although you have asserted that labour hire usage throughout the APS is a matter of significant public concern and debate, it is not clear how the particular documents requested will assist in this regard. The documents you have requested relate to specific labour hire providers and staff of the AAT and do not appear sufficiently representative, or necessary, to throw light on any issue of public debate regarding labour hire services.

The AAT publishes figures in relation to contractors and consultants in its Annual Reports. The provision of individual contracts which contain personal, business and commercial information would be of little value to a substantial section of the public and do not add to any public discussion. In this regard, I note that the articles that you referred to in your email of 16 April 2020 report on the ratio of APS staff with labour hire contractors in the Australian Public Sector and that the AAT Annual Report already provides the costs of its contractors separately from those of its staff. Information contained in the particular documents requested, contracts and emails about individual arrangements, have not been a topic of public interest or discussion and nor do the documents explain any particular decision made by the AAT.

Nevertheless, I also note that the cost of labour hire procurement may be of interest to persons other than yourself and for this reason, I have reduced the charge by \$195 in relation to processing of certain procedural documents.

### ***Decision***

For the reasons listed above, I have decided to vary the original assessment of the charge by \$195. The amount you are liable to pay is **\$6,023**.

### ***Your review rights***

If you are dissatisfied with my decision in relation to the charge, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

#### **Internal review**

Under section 54 of the FOI Act, you may apply in writing to AAT for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

#### ***Information Commissioner review***

Under section 54L of the FOI Act, you may apply directly to the Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: [https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)

email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

#### ***Questions about this decision***

If you have any questions or wish to discuss this decision with us, please contact me at [foi@aat.gov.au](mailto:foi@aat.gov.au).

Yours sincerely,

[Signed]

**Skye M**

Authorised FOI Officer (APS 6)