



Australian Government
Department of Education, Skills and Employment

John Smith

By email: foi+request-6221-cf5895d5@righttoknow.org.au

Dear Mr Smith

1. I refer to your request received by the Department of Education, Skills and Employment (the department) on 12 March 2020 for access under the *Freedom of Information Act 1982* (FOI Act) to:

“a copy of any reports, or powerpoint presentations on-file at the Department, associated with the consulting firm McKinsey & Company with regard to Commonwealth tender ID: CN3478122.”

2. On 20 March 2020, the department invited you to consider revising the scope of your request because initial searches indicated that there are a large number of documents falling within the scope of your request. On 26 March 2020, you revised the scope of your request to *“only include final presentations and final reports.”*

Background

3. On 2 April 2020, the department confirmed that while it does not hold a ‘final presentation’ which falls within the scope of your request, it does hold the latest versions of certain PowerPoint slides that would fall within the scope of your request. It was on the basis of that material that the department advised you of the preliminary estimate of the charge for processing your request, being \$90.00 (the Charge).
4. On the same day the department received your request for non-imposition of the Charge on public interest and financial hardships grounds pursuant to section 29 of the FOI Act. Specifically, you made the following submissions in support of your request for non-imposition of the Charge:

“1. There is significant public interest among a section of the public, regarding the government's use of external consultancies in the fulfilment of its work. This can be evidenced in the following example links:

- a paper by the University of Melbourne (accessible here: <https://pursuit.unimelb.edu.au/articles/reducing-governments-reliance-on-consultants>)
- a 2019 article by the Sydney Morning Herald: (accessible here: <https://www.smh.com.au/politics/federal/govt-nearly-triples-spend-on-big-four-consultancies-as-donations-rise-20190220-p50z22.html>)
- a 2018 article by ABC News (accessible here: <https://www.abc.net.au/news/2018-08-17/consultancy-bosses-quizzed-on-government-nickname-the-dairy/10132264>)

Given this public interest, an FOI request that seeks to uncover the details of a private consultancy arrangement with a department can be fairly argued to be within the public interest, or at least to be of interest of a section of the public.

2. ... Payment of the charge would cause financial hardship, as I am currently in-between work due to the societal shutdown from the COVID epidemic. As such I am presently a government payment recipient, and an eligible holder of a government low income health card. ...”

5. On 6 April 2020, the department asked you to provide evidence to support your submission in respect of financial hardship. In response, that same day, you asked the department to consider waiver of the Charge *“on the public interest ground first”*.
6. On 7 April 2020, the department advised you that in reviewing the Charge, it is not open to it to consider the public interest arguments first and then only consider whether the Charge would cause financial hardship if the department decides not to reduce or not impose the Charge based on your public interest arguments. On the same day, you responded to the department and asked that it *“please proceed immediately with an evaluation of my request on the public interest ground. If denied, I’ll attempt to substantiate my financial hardship grounds in a separate FOI request instead, to be made in the future.”*

Decision

7. I am authorised to make decisions under subsection 23(1) of the FOI Act and the following is my decision in relation to your request for non-imposition of the Charge.
8. For the reasons set out below, I have decided to not alter the Charge by reduction or non-imposition. The Charge remains as \$90.00.

Reasons for decision

9. I have taken the following material into account in making my decision:
 - the department’s correspondence dated 2 April 2020 notifying you of the Charge;
 - your correspondences seeking 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

10. 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.
11. On 2 April 2020, the department advised you that it has in its possession approximately 60 pages of material relevant to your request. The Charge, totalling \$90.00, was calculated as follows:

Search and retrieval time: 2 hours at \$15.00 per hour:	30.00
Decision-making time: 8 hours minus the first 5 hours* at \$20.00 per hour:	60.00
TOTAL	\$90.00

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

12. In calculating a processing charge for a freedom of information application, 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;
 - number of third parties with whom it will be necessary to consult in the course of making a decision regarding release of the documents;
 - 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
 - number of pages considered sensitive, requiring redaction (potentially requiring extra decision-making time).
13. 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 then applies his or her own experience to evaluate the reasonableness of the amount calculated.
14. In relation to your request, the Charge was calculated on the time it would take to search and retrieve the documents within the scope of your FOI request, consult with an external third party, and prepare a decision on access.

Reduction or non-imposition of the Charge

15. 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

16. As required by subsection 29(5) of the FOI Act, I have turned my mind to whether imposition of the Charge would cause you financial hardship. In your correspondence, you have contended that payment of the Charge would cause you financial hardship, as you are in-between work and a government payment recipient. However, you have elected not to provide the department with any supporting evidence of your financial situation. Accordingly, there is no basis upon which I can make a decision to reduce or not impose the Charge by reason that payment of it would cause you financial hardship.

Public interest

17. Paragraph 29(5)(b) of the FOI Act provides that 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 requires the decision maker to identify the ‘general public interest’ or the ‘substantial section of the public’ that will benefit from the disclosure of the documents.
18. The Guidelines explain at paragraph 4.81 that the question of whether the giving of access is in the ‘general public interest’ or in the interest of a ‘substantial section of the public’ may require consideration of both *“the content of the documents requested and the context in which their public*

release would occur. Matters to be considered include whether the information in the documents is already publicly available, the nature and currency of the topic of public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents."

19. The Guidelines also note at paragraph 4.83 that the 'public interest' is a concept *"of wide import that cannot be exhaustively defined"*. The Guidelines provide examples that illustrate the circumstances in which the giving of access may be in the general public interest or in the interest of a substantial section of the public. These include:
- the document relates to a matter of public debate, or a policy issue under discussion within an agency, and disclosure of the document would assist public comment on or participation in the debate or discussion;
 - the document relates to an agency decision that has been a topic of public interest or discussion, and disclosure of the document would better inform the public as to why or how the decision was made, including highlighting any problems or flaws that occurred in the decision-making process; and
 - the document would add to the public record on an important and recurring aspect of agency decision making.
20. In support of your request for non-imposition of the Charge, you submitted that the release of the documents is in the public interest because:
- "There is significant public interest among a section of the public regarding the government's use of external consultancies in the fulfilment of its work".*
21. Having regard to the content of the PowerPoint presentations within the scope of your FOI request, I do not accept that giving access to the documents is in the general public interest, or in the interest of a substantial section of the public. While I accept that the documents do broadly relate to a topic of public interest, they do not in my view assist the public to comment on, or participate in, any debate or discussion on that topic, or add in any meaningful way to the public record on the topic. This is because the materials captured by your request are versions of PowerPoint presentations at points in time and the data reflected in any tables and graphs were inputs to the Secretariat supporting the Review Panel. As such, the material was ultimately used to produce exhibits in a report and I consider this finalised material in the report would add to the public record on the topic. This report and relevant material, however, is already in the public domain as it was published by the Australian Government in March 2018. The report is titled *"Through Growth to Achievement: The Report of The Review to Achieve Education Excellence in Australian Schools"* and is able to be viewed by the public at the following link:
https://docs.education.gov.au/system/files/doc/other/662684_tgta_accessible_final_0.pdf.
22. I am also not satisfied that the material captured by your request would reveal meaningful details about the particular consultancy arrangement or reflect the totality of the work produced under the arrangement.
23. In addition to the above, I have considered the cost of processing the FOI request and I consider that I have been conservative in my estimates of how long the decision-making process will take. The process includes examining the pages in scope, consulting with departmental officers and an external third party, and writing my statement of reasons for the decision. I have therefore decided to impose the Charge.

Options to proceed with your request

24. 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 Charge (either the deposit or in full); or
- (b) request a review of the decision to impose the Charge.

25. Alternatively, if you wish to withdraw your request at this time, you may do so in writing.

Option A – pay the Charge

26. As the Charge exceeds \$25 but is less than \$100.00, 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.

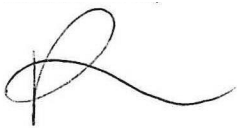
Option B – request a review of the decision to impose the Charge

27. I have enclosed information about your rights of review under the FOI Act at **Attachment A**.

28. If the department has not received payment of the Charge within 30 days as specified under Option A, your FOI request will be taken to have been withdrawn.

Please contact me via email at foi@dese.gov.au if you would like to discuss this matter.

Yours sincerely



Ruth
Freedom of Information Team
Information Law, Corporate and Schools Legal Branch
20 April 2020

Attachment A

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:

Email: foi@dese.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](#), 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. The AIC advises that, before making a complaint to it, you should raise your concerns directly with the relevant agency.

Applications for review or complaint can be lodged in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218 Sydney NSW 2001
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.

Credit Card Authorisation

About this form

You have advised the Department of Education, Skills and Employment that you would like to pay the charge imposed for the processing of your freedom of information (FOI) request by credit card. This form collects the details required from you in order to process that payment by credit card. Please ensure all fields have been filled in correctly.

Part 1: Applicant Details

Name:

Contact number:

Part 2: Credit Card Details

I authorise the Department of Education, Skills and Employment to debit my credit card in the amount of:
(please specify amount in the space provided)

\$

Cardholder's Name (please print name in capital letters):

Credit Card Number:

Credit Card Type (Diner's Card not accepted):

Credit Card Expiry Date:

Card Holders Signature:

Date:

Privacy Statement

The personal information collected on this form is collected by the Department of Education, Skills and Employment for the purposes of administering payment of the charge imposed for processing your freedom of information request. The information collected will not be disclosed unless authorised or required by law.