



Mr John Smith

Via email: foi+request-6327-718b603e@righttoknow.org.au

Dear Mr Smith

Your Freedom of Information request – Charges decision

I refer to your revised request, received by the Department of Agriculture, Water and the Environment (**department**) on 28 May 2020 for access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

‘a copy of all emails in which this transaction [the Eastern Australia Agriculture’s 2017 sale of water rights to the department] has been discussed by SES-level staff within the department (including deleted or archived emails). Please exclude emails that were not sent or received [sic] by an SES level public servant from the FOI request. To make this part of the FOI request feasible, please restrict this request to only encompass emails that contain either 'Eastern Australian Irrigation' or the acronym 'EAI' as an exact term within the email. (This should make it possible to do a simple electronic search for emails within the department's database).’

My decision

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided to affirm the charge of \$100.83. My findings of fact and reasons for this decision are discussed below.

Preliminary assessment of charge

On 11 June 2020, the department wrote to you to advise you that you were liable for a charge of \$100.83 for processing your request.

The preliminary assessment of that charge was calculated as follows:

Search and retrieval time: 1/2 hour, at \$15.00 per hour	\$7.50
Consultation with 3 third parties, 2 hours per party, at \$20 per hour	\$120.00
Decision-making time: 3.67 hours, at \$20.00 per hour	\$73.33
Reduction of 5 hours*	-\$100.00
TOTAL	\$ 100.83

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

Your contentions

On 11 June 2020, you requested a waiver of the charge for processing your request under the FOI Act, on the grounds that the release of the documents are in the public interest. Specifically, your correspondence provided:

'Given the OBVIOUS public interest in documents that are the subject of this FOI request, I ask that your department waive the FOI fee in its entirety in relation to the documents requested.

In case this public interest needs to be spelled out; this transaction has been mentioned in the news:

Here -> <https://www.afr.com/rear-window/eastern-australia-agriculture-s-80-million-accounting-triumph-20190429-p51ics>

Here -> <https://www.theguardian.com/australia-news/2019/apr/23/barnaby-joyce-requested-updates-on-80m-sale-of-water-by-eastern-australia-agriculture>

Here -> <https://www.abc.net.au/news/2019-04-23/water-buybacks-everything-we-know/11037798>

And here -> <https://www.michaelwest.com.au/barnaby-joyce-angus-taylor-australia-and-the-caribbean/>

This request could not possibly be more in the public interest. Please waive the associated fee.'

Financial hardship

Under section 29(5)(a) of the FOI Act, I am required to consider whether payment of the charge would cause financial hardship to you.

Paragraph 4.75 of the Guidelines relevantly provides:

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 and your family, or other people for whom you are responsible.

The Guidelines further provide that an applicant relying on the grounds of financial hardship would ordinarily be expected to provide some evidence of financial hardship, such as receipt of an income support payment or evidence of income, debts or assets. In this regard, I note that you have not contested the charges notification due to financial hardship and as such have not provided evidence of your financial status.

Public interest

Under section 29(5)(b) of the FOI Act, I am required to consider whether giving access to the documents would be in the general public interest or the interest of a substantial section of the public.

Paragraph 4.80 of the Guidelines relevantly provides:

An applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that would benefit from this disclosure. This may

require consideration both of 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 the public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents.

The Guidelines further provide that there is no presumption that the public interest test is satisfied by reason only that the applicant is a Member of Parliament, a journalist or a community or non-profit organisation. The Guidelines further provide that it is necessary to go beyond the status of the applicant and to look at other circumstances.

While I have noted your submissions in relation to the public interest, I am not satisfied that it would be in the general public interest or the interest of a substantial section of the public to give access to the documents without imposing charges. I note that the FOI Act provides for the imposition of fees and associated fee reductions for the first five hours of departmental effort. In addition, whilst there may be public commentary and public interest relating to the topic of the Eastern Australia Agriculture's 2017 sale of water rights to the department, you have not established that this is the case in relation to the specific documents you are seeking through this amended request.

A significant volume of documents on the transaction has already been publicly released in response to an Order for the Production of Documents from the Australian Senate and other FOI requests. If the release of the documents you are now seeking was in the general public interest, then it is reasonable to assume they would have been within the scope of the Senate's request.

I have reviewed your requested documents and they do not contain information, disclosure of which would be in the general public interest. Furthermore, your reasons for contesting the charges which is a series of online news articles, refer to the topic of Eastern Australia Agriculture's 2017 sale of water rights, however as noted above, your submission does not include the way in which a general public benefit may flow from the release of your specifically requested documents. As such, I have decided to affirm the charge.

Payment details

If you would like the department to continue processing your request, you must respond to the department within 30 days after receiving this notice. If you do not respond within 30 days, your request will be taken to have been withdrawn and no further action will be taken by the department.

As the charge exceeds \$25, you are required to pay a deposit of \$25.21. You may, of course, elect to pay the charge in full at this point. Payment can be made:

- credit card by completing the attached form and sending a scanned copy to foi@agriculture.gov.au or posting it to the address below
- cheque or money order made payable to 'Department of Agriculture, Water and the Environment', and forwarded to the following address:
FOI Coordinator
Department of Agriculture, Water and the Environment
GPO Box 858
CANBERRA CITY ACT 2601
- direct deposit to:

A/C Name: DAWR Departmental Account
Branch: London Circuit, Canberra
Bank: Reserve Bank
BSB: 092 009
A/C No. 111 698
ABN No: 24 113 085 695.

If payment is made by direct deposit, please include the FOI reference number (LEX-4161) in the subject field, and send an email with notification of payment to foi@agriculture.gov.au as soon it has been made.

Time periods of processing your request

Section 31 of the FOI Act provides that where a notice is sent to an applicant regarding the payment of a charge in respect of a request, the time limit for processing the request is suspended from the date the applicant was notified of the charge until:

- the day after the charge (or deposit) is paid; or
- if applicable, where a subsequent review decision has been provided, the day after:
 - a charge or deposit has been paid; or
 - the applicant is notified of a decision to not impose the charge.

You can ask for a review of my decision

You may apply to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

You can also make a complaint to the Commonwealth Ombudsman if you have concerns about how the Department handled a request for documents under the FOI Act, or took any other action under the FOI Act. There is no fee for making a complaint to the Commonwealth Ombudsman.

Information about making a complaint to the Commonwealth Ombudsman is available in its website www.ombudsman.gov.au or phone the Ombudsman on 1300 362 072.

Further assistance

If you have any questions, please email foi@agriculture.gov.au.

Yours sincerely



John Robertson
Assistant Secretary
Water Division
9 July 2020