



Australian Government

Department of Social Services

Mr John Smith

By email: foi+request-6348-efb766c3@righttoknow.org.au

Dear Mr Smith

Freedom of Information Request 19/20-133

I refer to your request for access under the Commonwealth *Freedom of Information Act 1982* (FOI Act) to:

"Please provide all documents relating to the Open Tender of and contract for Management Advisory Services by the Department of Social Services, awarded to Ernst & Young ("EY") including documents relating to the:

- 1. calling of the tender*
- 2. the contract awarded to EY (please provide a copy)*
- 3. any technical specifications or requirements issued by DSS in relation to the tender or contract".*

Background

The Department of Social Services (the department) advised you on 3 June 2020 that the preliminary estimate of the charge for processing your request was \$93.56 (the charge).

In an email to the department of the same day, you contended that the charge:

- should not be imposed on financial hardship grounds under paragraph 29(5)(a) of the FOI Act; and
- should not be imposed on public interest grounds under paragraph 29(5)(b) of the FOI Act.

Specifically, you made the following submissions in support of your contention:

"The public interest in determining the propriety of a \$6M contract to the private sector to the department, is clear. It is so clear and overriding, that the entirety of the ordinarily applicable fee ought to be waived in this instance.

I ask that you waive the fee. If you are not willing to waive this fee, I ask that your decision here regarding the fee be internally reviewed.

Secondly, if you are not willing to waive this fee on public interest grounds; I am willing to provide documentation to prove that paying such a fee would cause financial hardship.

Please waive the fee, or internally review this decision."

I am authorised to make decisions under the FOI Act and the following is my decision in relation to your contention that the charge should not be imposed.

In accordance with section 54C of the FOI Act, I am required to review the preliminary estimate of charges decision and make a fresh decision. As the decision-maker for the internal review of charge, I am in no way bound by the initial charge decision.

Decision

My decision is to impose a charge of \$93.56. The reasons for my decision are outlined below.

Reasons for decision

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

- your initial request for documents;
- the notice of charge letter sent to you on 3 June 2020;
- your email of 3 June 2020 contending that the charge should be waived;
- documents falling within the scope of your request;
- the Commonwealth 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).

Financial hardship

I note in your response to the notice of charge you stated:

"... if you are not willing to waive this fee on public interest grounds; I am willing to provide documentation to prove that paying such a fee would cause financial hardship."

The charge notice sent to you on 3 June 2020 indicated:

If you believe that payment of the charge would cause you financial hardship, please provide sufficient details of your financial circumstances to enable the decision-maker to make a well-informed decision ...

Given that you have not provided documentation as to how the imposition of the charge would cause you financial hardship, I have decided that there are no grounds to make a decision to waive the charge for financial hardship reasons.

Public interest

In determining whether to reduce or not impose the charge, I am required to consider 'whether the giving of access to the documents 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 benefit flowing generally to the public or a substantial section of the public from disclosure of the documents falling within scope of your request.

In considering the benefit that would flow to the public, I have reviewed the documents in question and considered the nature, content and context of the documents.

I accept your contention that there is a public interest in how the government spends money. However, I note the decision maker acknowledged there was a public interest factor in this case and pre-emptively reduced the charge by 15 per cent.

I had regard to paragraph 4.80 of the Guidelines that outlines an applicant's interest in a particular subject does not automatically equate to a general public interest, nor does the premise that general transparency is in the public interest.

I am aware you have submitted a number of FOI requests via the Right to Know website to various government departments and agencies in relation to procurements and/or contracts. As such, I consider that you are seeking information to satisfy your interest of that particular subject, rather than broad transparency for the public. Further to this, the Guidelines advise, should an applicant contend that there is a general public interest on a particular topic, they should identify how this cohort would benefit from the disclosure. In note your contention does not identify how release of the material you seek access to would benefit the general public other than stating:

The public interest in determining the propriety of a \$6M contract to the private sector to the department, is clear.

I also considered paragraph 4.84 of the of the Guidelines which discusses whether it would be reasonably necessary to release further documentation for the purpose of contributing to public discussion or analysis of an issue.

The department follows the Commonwealth Procurement Rules that govern how goods and services are acquired to ensure the Government and taxpayers obtain value for money. Contracts are also published on AusTender to inform public of Australian Government business opportunities, annual procurement plans and contracts awarded as required. The procurement rules and AusTender publication requirements are in place to ensure the public has sufficient oversight of government spending. I consider there is already sufficient information in the public domain relating to the subject of this request. I consider that the range and volume of the documents within the scope of your request would not further inform the public debate on this subject.

I affirm the original decision to impose a charge and I am satisfied it has been sufficiently reduced in the public interest and should not be further reduced or waived.

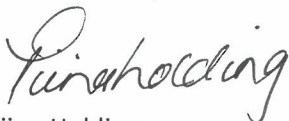
Options to proceed with your request

In order for your request to proceed, you are required to respond in writing to one of the following options before close of business on 3 July 2020.

- Pay the deposit of \$20.00 or the full charge of \$93.56. Please complete and return the attached authorisation form. Upon receipt of the form an invoice will be issued to you.
- Withdraw your request in writing to foi@dss.gov.au.
- Request an external review of this decision to impose the charge. See **Attachment A** for more information.

Should you have any queries concerning this matter, please do not hesitate to contact me.

Yours sincerely



Tiina Holding
A/g Director
Parliamentary, FOI and Annual Report
Government and Executive Services Branch

19 June 2020



Australian Government
Department of Social Services

Freedom of Information Request 19/20-133

By signing this form you are agreeing to pay the charges notified to you by the Department of Social Services (the department). Once our office receives this form, the department will generate an invoice in order for you to make payment of the agreed charges.

Please sign and return the form to foi@dss.gov.au Alternatively you can send it via mail to:

Freedom of Information
Government and Executive Services Branch
Department of Social Services
PO Box 9820
CANBERRA ACT 2601

Acceptance of charge

I, John Smith accept the charges as set out in the Preliminary Assessment of Charges.

I acknowledge that the details provided below are true and correct, and upon return of this document, I will be invoiced for the amount set out in the notice of charge.

☐ I elect to pay the **full amount** of \$93.56

☐ I elect to pay the **deposit amount** of \$20.00

Print Name

Signature

Date

Required information

In order to proceed, the department requires the following information from you to raise an invoice.

Full name / Organisation: (Include ABN if applicable)		
Postal Address:		
Contact numbers:	Home/Business	
	Mobile	
Email:		

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 5218
Sydney, NSW 2001

Phone: 1300 262 992 or +61 2 9284 9749 (international)

Email: enquiries@oaic.gov.au

In person: Level 3, 175 Pitt Street, Sydney, NSW 2000