



Administrative Appeals Tribunal

FOI ref: 2020/0048

18 June 2020

Mr John Smith

Mr Jack Thornton

By email: foi+request-6349-23080a19@righttoknow.org.au

foi+request-6364-1bb62a25@righttoknow.org.au

Dear Mr Smith and Mr Thornton,

I refer to Mr Thornton's request for access to documents under the *Freedom of Information Act 1982* (FOI Act) which was sent to the Tribunal on 29 May 2020.

Mr Thornton requested access to a copy of the following documents:

- *The earliest ten emails between AAT senior officer Sera Clemens & the labour hire recruitment firm Launch recruitment pty ltd. Please include deleted or archived emails within this FOI request.*
- *Please exclude from these emails, any emails that do not discuss salary or the terms and conditions for the employment of labour hire staff on premises at the AAT.*
- *This FOI request attempts to find the rate set for labour hire staff by the AAT, when Launch recruitment was initially engaged. We have reason to believe that the rate set across the department was below the applicable award rate.*

Section 24 of the FOI Act – Multiple requests

Section 24(2) of the FOI Act provides that an agency may treat two or more requests as a single request if the agency is satisfied that:

- (a) the requests relate to the same document or documents; or
- (b) the requests relate to documents, the subject matter of which is substantially the same.

Paragraph 3.123 of the FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC) explains that the most common circumstance in which requests may be combined under s 24(2) is where there are multiple requests from a single applicant. However, s 24(2) can also apply to two or more requests from *different* applicants. In addition, the Guidelines state that multiple requests can only be combined as a single request under s 24(2) if there is a clear connection between the subject matter of the requested documents.

I have considered the nature of the documents requested on 29 May 2020 from Mr Thornton and the documents requested from Mr Smith on 19 May 2020, in the context of s 24(2). The common thread in your requests is that they concern labour hire staff and procedures at the AAT and I consider there to be a clear connection between the subject matter (labour hire) in



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both FOI requests. I am therefore satisfied that the requests relate to documents, the subject matter of which is substantially the same. I also note that your FOI request states that Mr John Smith and Mr Jack Thornton are colleagues.

Consequently, I have combined the FOI request received from Mr Smith on 19 May 2020 with the FOI request received from Mr Thornton on 29 May 2020 into one single request under s 24(2) of the FOI Act.

Notice that you are liable to pay a charge

I now refer to the combined request below. I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests. I am writing to advise you of my decision that you are liable to pay a charge in respect of the processing of your request. Together, you have requested access to:

- 1. The five most recent contracts (as at the date of this email) between the AAT, and the labour hire provider 'Launch Recruitment'.*
- 2. A copy of the AAT's policy & procedures regarding the use of labour hire firms. Please narrow this request to only include documents that meet this description that are, or have been available on the AAT's intranet, for use by the AAT's managerial staff when procuring labour hire services.*
- 3. The total number of labour hire staff presently working at the AAT. (Or a document, if it exists, that would detail that fact)*
- 4. The names of the labour hire firms presently supplying labour hire services to the AAT. (Or a document, if it exists, that would detail that fact)*
- 5. The amount spent by the AAT in the first quarter of 2020 on labour hire services. This is a distinct figure from the amount spent on contractors generally, a figure available in the annual reports. What I am interested in is the amount spent by the AAT on labour hire contractors that are fulfilling roles functionally identical to ordinary APS staff. (This would exclude, for example; an amount spent on a contractor electricians, or contractor management consultant etc).
If this figure cannot be found in an existing document, please exclude it from the FOI request.*
- 6. Any emails or instant message chat records within the inbox of either Chris Sutton or Sera Clemens that discuss the story: <https://www.michaelwest.com.au/boomers-vs-millennials-the-gig-economy-breaks-enters-the-australian-public-service/>
Please include only emails or skype records from the dates 9th & 10th of April inclusive.
Please include deleted or archived emails for these two dates.*
- 7. The earliest ten emails between AAT senior officer Sera Clemens & the labour hire recruitment firm Launch recruitment pty ltd. Please include deleted or archived emails within this FOI request. Please exclude from these emails, any emails that do not discuss salary or the terms and conditions for the employment of labour hire staff on premises at the AAT.*

In accordance with section 29 of the FOI Act and the *Freedom of Information Charges Regulations 1982*, my preliminary assessment of the charge you are liable to pay is **\$889.00**.



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Basis for my preliminary assessment of the charge

Staff members have conducted searches for documents relating to your request. The number of documents requiring examination to determine whether or not they fall within the scope of your request is estimated at 24. These are in electronic format. This includes emails, spread sheets and contracts. The calculations below are based on sample processing times and prior experience of processing matters of similar size.

Please note, if you require searches of the AAT's back-up tapes in order to obtain any archived or deleted emails relevant to parts 6 & 7, additional charges may apply.

I have assessed the work the AAT would need to do to process your request and have calculated the following breakdown of charges:

Document estimate	
Number of relevant documents	24

PROCESSING CHARGES		
Search and retrieval		
Task	Time	Cost @ \$15/hr
Search and retrieval of relevant documents	7 hours	105.00
Collation of emails, contracts and reports, including printing, sorting and assessment of scope	8 hours 30 mins	127.50
Preparation of schedule of documents, including sorting, cross checking and describing documents	3 hours	45.00
A. Search and retrieval subtotal		277.00 (rounded)

Decision making		
Task	Time	Cost @ \$20/hr
Examination of documents, including reading all documents, identifying parties who may require consultation and consideration of exemptions	8 hours	160.00
Consultation with third parties under section 27 and s27A (estimate 1 complex entity, 43 other entities and five persons that may reasonably wish to raise an exemption)	10 hours	200.00
Preparation of documents for release, including marking	9 hours	180.00



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redactions, and copying to disk		
Preparation of notice of access decision, including proof reading	8 hours	160.00
Decision making subtotal (before deduction of 5 hours)		700.00
B. Decision making subtotal (after deduction of first 5 hours free)	-5X20	600.00

ACCESS AND DELIVERY CHARGES		
		Cost
Delivery (actual cost)	1 Satchel	12.20
C. Access and delivery charges subtotal		12.20

ESTIMATED TOTALS AND DEPOSIT	
ESTIMATED TOTAL (total of A, B and C)	889.00 (rounded)
REQUIRED DEPOSIT	222.00 (rounded)

Your right to contend the charge

Under the FOI Act, you have the right to contend that the charge:

- has been wrongly assessed, or
- should be reduced, or
- should not be imposed.

In deciding whether a charge should be reduced or not imposed, the decision maker in our agency must take into account:

- whether payment of the charge, or part of it, would cause you financial hardship
- whether giving access to the documents is in the general public interest or in the interest of a substantial section of the public
- any other relevant matter.

Payment of a deposit

As the charge exceeds \$100, a 25 per cent deposit of \$222.00 will be sought if the charge is imposed.

The deposit is not refundable except in some limited circumstances for example, if the AAT fails to make a decision on your request within the statutory time limit, or may be refundable in part if the final charge is less than the deposit paid.



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Should you decide to pay the charge, please contact us regarding the method of payment.

The time you have to respond and what you need to do

You have 30 days to respond in writing to this notice. We therefore expect a response from you by **20 July 2020**. By that date, you must do one of the following things in writing:

- agree to pay the charge (this will mean that you will not be entitled to access the requested documents until the full charge is paid)
- contend that the charge has been wrongly assessed, or should be reduced or not imposed and explain your reasons
- withdraw your request.

Please send your response to:

foi@aat.gov.au

If you do not provide us with a written response by **20 July 2020** your request will be taken to have been withdrawn.

The period for processing your request is suspended from the day that you receive this notice and resumes on either the day you pay the charge (in full or the required deposit) or the day on which this agency makes a decision not to impose a charge.

Questions about this notice

If you have any questions or wish to discuss this notice with us, please contact me by return email.

More information about charges under the FOI Act is available on the Office of the Australian Information Commissioner's website: www.oaic.gov.au.

Yours sincerely

Skye M
Authorised AAT Officer