



17 July 2020

Our reference: LEX 55232

Mr John Smith

By email only: foi+request-6372-24470d98@righttoknow.org.au

Dear Mr Smith

Freedom of Information Request – Reconsideration of Charges

I refer to your email dated 17 June 2020, contending that a charge should not be imposed in relation to the processing of your request dated 2 June 2020, made under the *Freedom of Information Act 1982 (FOI Act)*. Your request was framed in the following terms:

'I wish to obtain a copy of the contract between Services Australia and McKinsey, in association with the tender CN ID: CN3665818

I also wish to obtain documents (if they exist) explaining the purpose of this tender, and the criteria used to award this contract.

Given the sizeable amount of money associated with this contract (a contract value exceeding an absolutely enormous \$17,000,000.00 AUD); I ask that the public interest in transparency of this tender be recognised, and that as a consequence the ordinarily applicable FOI fee be waived in this instance.

Please limit your search to a reasonable search of the department's electronic records system.'

Background

Services Australia conducted searches of its records and identified two documents (the **requested documents**) within the scope of your request.

On 16 June 2020, Services Australia notified you that in accordance with section 29 of the FOI Act, you were liable to pay a charge for the processing of your request and that the preliminary assessment of the charge was \$46.67 (**preliminary charge**).



The preliminary charge was calculated as follows:

Search and retrieval time: 0.67 hours, at \$15.00 per hour:	\$10.00
Decision-making time (after deduction of 5 hours*): 1.83 hours, at \$20.00 per hour	\$36.67
TOTAL	\$46.67

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

Reconsideration of the preliminary charge

On 17 June 2020, you responded to the preliminary charge notification, contending that the preliminary charge should be reconsidered (the **reconsideration request**). Your reconsideration request was made in the following terms:

Given the large amount of public money associated with this tender, I ask that a public interest in the transparency of this matter be recognised; and the ordinarily applicable FOI fee be consequently waived in its entirety, on the grounds of a public interest in the proper use of public expenditure.

Alternatively, I request that the fee be waived on the ground of financial hardship.

I have now reconsidered the preliminary charge. I have decided to affirm the preliminary charge of **\$46.67** as set out in the table above.

I am satisfied that the preliminary charge reflects the lowest reasonable cost to provide you with a decision on access to the requested documents. I have set out my reasons for reaching this decision below.

What I took into account

In reaching my decision on the reconsideration of the charge, I took into account:

- the terms of your request dated 2 June 2020;
- the preliminary charge dated 16 June 2020;
- your reconsideration request dated 17 June 2020;
- the requested documents;
- relevant case law;
- the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982* (the **Regulations**); and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**).



Relevant legislation

Subsection 29(4) of the FOI Act provides that, where an applicant has notified an agency that they contend that a charge should be reduced or not imposed in relation to a request under the FOI Act, then the agency may decide that the charge is to be reduced or not imposed.

Subsection 29(5) of the FOI Act provides that, without limiting the matters that the 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.

Subsection 29(8) of the FOI Act provides that, if an applicant makes a contention about a charge as mentioned in subsection 29(4) and the agency makes a decision to reject the contention in whole or part, then the agency must give the applicant written notice of the decision and the reasons for the decision.

Reconsideration of the preliminary charge

In order to complete a comprehensive reconsideration of the preliminary charges, I have reconsidered the calculations set out in the preliminary charge and set out my conclusions below.

Search and Retrieval time

In response to your request, Services Australia conducted searches of its records for any relevant documents. These searches included consultation with the relevant business area within Services Australia to:

- identify the relevant file;
- search the file to identify all documents that fell within the scope of your request;
- retrieve the requested documents; and
- prepare a schedule detailing the requested documents.

The preliminary charge estimated the time taken to search for and retrieve the requested documents was 0.67 hours. The business area that undertook those duties has advised me that the estimated time in the preliminary charges is an accurate estimate of the time taken to complete the task. Accordingly, I have decided not to revise the search and retrieval component of the preliminary charge.

Decision-making time

When calculating the decision-making component of the preliminary charge, I have estimated the time required to:



- examine relevant pages;
- undertake a consultation with an interested third party;
- consider the results of the consultation with the interested third party;
- where required, make required redactions to the pages for release; and
- prepare a statement of reasons for decision.

The preliminary charge included a total 6.83 hours for decision-making time. This calculation included 3 hours to prepare a statement of reasons for the decision. For the purposes of your reconsideration request, I have formed the view that 3 hours is an accurate estimate required for the completion of this task.

I am also satisfied that the other decision-making components of the preliminary charge accurately reflects the lowest reasonable cost for processing your request. In particular, I note that the preliminary charge estimated five minutes per page for the examination of the document for decision-making purposes and to redact exempted material.

Given the need to carefully examine the requested documents in light of the consultation with the interested third party, I am satisfied that the estimates for examining the relevant pages and marking required redactions are an accurate reflection of the time that would be required to undertake those tasks.

Further, I consider that 2 hours to undertake a consultation and consider the response from the affected third party is a reasonable estimate of the true time that would be taken to undertake these tasks.

In summary, I am satisfied that the preliminary charge set out in the table above accurately reflects the lowest reasonable cost for processing your request.

Reconsideration of the Preliminary Charge – other considerations

Your reconsideration request also disputed the preliminary charges on financial hardship and public interest grounds. My consideration of these matters is set out below.

Financial Hardship

Paragraph 29(5)(a) of the FOI Act provides that an agency must take into account whether payment of a charge, or part of it, would cause financial hardship to an applicant.

The Guidelines at 4.77 relevantly provide:

‘An applicant relying on this ground could ordinarily be expected to provide some evidence of financial hardship. For example, the applicant may rely upon (and provide evidence of) receipt of a pension or income support payment; or provide evidence of income, debts or assets...’



You have not provided any evidence to show that payment of the preliminary charge would cause you financial hardship, and I have decided not to reduce the preliminary charge on this basis.

The public interest

Paragraph 29(5)(b) of the FOI Act provides that an agency must also take into account whether the provision of access to the requested documents is either in the general public interest, or in the interest of a substantial section of the public. In other words, there must be a benefit flowing generally to the public or a substantial section of the public from disclosure of the documents in question. This requires me to consider the nature of the documents and the context of their release.

In *MacTiernan and Secretary, Department of Infrastructure and Regional Development* [2015] AATA 584, the Administrative Appeals Tribunal found that where release is in the general public interest, or in the interest of at least a substantial section of the public, charges ought to be waived. Conversely, this decision also supports the view that where there is little public interest in the release of information that is within scope, then it is appropriate for the charges to be affirmed.

Paragraphs 4.81 and 4.82 of the Guidelines also provide:

‘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 public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents (*Internal references deleted*)...

[T]he applicant may be expected to draw a link between being granted access to the documents and a derivative benefit to either the general public interest or a substantial section of the public.’

Paragraph 4.79 of the Guidelines provides:

This test is different to and to be distinguished from public interest considerations that may arise under other provisions of the FOI Act.

I further note you made the following submission in your reconsideration request:

Given the large amount of public money associated with this tender, I ask that a public interest in the transparency of this matter be recognised; and the ordinarily applicable FOI fee be consequently waived in its entirety, on the grounds of a public interest in the proper use of public expenditure.

Consideration of the public interest

The primary question is whether a benefit will flow to the public generally or a substantial section of the public from disclosure of the information in the documents in scope of your request. This requires me to consider the nature of the requested documents and the context surrounding its potential release.



Relevant to this issue, paragraph 4.84 of the Guidelines provides that an agency may consider, '... whether the range or volume of documents requested by an applicant could be considered reasonably necessary for the purpose of contributing to public discussion or analysis of an issue'. I note that the contract management practices and service delivery practices of Services Australia are already scrutinised in a number of forums, including parliamentary committees and the media.

In addition, Services Australia is obliged to comply with the Commonwealth Procurement Rules (the CPRs). The CPRs govern how Commonwealth authorities procure goods and services to ensure the Government and taxpayers obtain value for money. Among other obligations, the CPRs require Commonwealth authorities (including Services Australia) to report contracts on AusTender. AusTender publication requirements set out in the CPRs are in place to ensure the public has sufficient oversight of government spending. Services Australia has complied with its publication requirements under the CPRs by reporting the relevant contract on AusTender.

In light of the above, I consider that the release of the requested documents would not further inform the public debate on the contract management practices and service delivery practices of Services Australia. Nor would it provide any scrutiny about the services that have been provided in accordance with the terms of the contract. Having considered these factors and your reconsideration request, I am not satisfied that you have provided persuasive reasons in favour of waiving the preliminary charge in the public interest.

Furthermore, I do not consider that release of the requested documents would be in the general public interest, or the interest of a substantial portion of the public. Accordingly, I am not satisfied that there are sufficient public interest factors in favour of reducing or waiving the charge associated with the processing of the requested documents.

Conclusion

I am satisfied that the preliminary charge set out above accurately reflects the lowest reasonable cost for the time that it will take Services Australia to process your request.

I am not satisfied that the preliminary charge should be reduced or waived on the grounds of financial hardship or that the release of the document would be in the general public interest or in the interest of a substantial section of the public.

I have decided that the preliminary charge of **\$46.67** is appropriate and reasonable to provide you with a decision on access to documents.



Required action

If you would like Services Australia to continue processing your FOI request, please notify Services Australia in writing within 30 days of receiving this letter that you:

- a) agree to pay the charge (deposit or in full); or
- b) seek review of the charge, being:
 - i. internal review; or
 - ii. external review.

Alternatively, you may wish to withdraw your request for access to documents. If you wish to withdraw your request, please do so in writing to FOI.LEGAL.TEAM@servicesaustralia.gov.au.

If we do not hear from you within 30 days we will take your request to be withdrawn.

Further information on options a) and b) is provided below.

Please note that the payment of a charge does not guarantee access to documents, in full or in part.

Option a) - pay the charge

As the preliminary charge exceeds \$25.00 but does not exceed \$100.00, you are required to pay the charge in full, or a deposit of \$20.00 within 30 days of receiving this notice. You may select from one of the following payment methods:

1. Online payment via Government EasyPay – please go to https://www.ippayments.com.au/access/index.aspx?a=85987733&dl=legalservices_hpp_purchase and enter the relevant details. You will need your FOI LEX reference number, **LEX 55232**; or
2. Cheque made out to the Collector of Public Monies and posted to Freedom of Information, Services Australia, PO BOX 7820, Canberra BC, ACT 2610; or
3. Money order made out to the Collector of Public Monies and posted to Freedom of Information, Services Australia, PO BOX 7820, Canberra BC, ACT 2610.

If you elect to pay the charge, please email FOI.LEGAL.TEAM@servicesaustralia.gov.au to advise us of your payment. Please quote reference number **LEX 55232** in this correspondence.



Option b) – seek review

If you disagree with the decision to impose a charge, or the amount of the charge, you can ask for a review. There are two ways you can do this. You can ask for an internal review from within Services Australia, or an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment A** for more information about for to arrange a review.

Time limits for 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 notice is received until either:

- a) the day following payment of the charge (in full or the required deposit); or:
- b) if applicable, the day following the notification to the applicant of a decision not to impose the charge.

Address for correspondence

Please send all correspondence regarding your FOI request to me at the following address:

Freedom of Information
Services Australia
PO Box 7820
CANBERRA ACT 2610

Or by email to FOI.LEGAL.TEAM@servicesaustralia.gov.au.

Further assistance

If you have any FOI questions please email FOI.LEGAL.TEAM@servicesaustralia.gov.au.

Yours sincerely

Don

Authorised FOI Decision Maker
Freedom of Information Team
Employment Law and Freedom of Information Branch | Legal Services Division
Services Australia



Attachment A

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a Freedom of Information decision

Before you ask for a formal review of a freedom of information decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

Asking for a formal review of an Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

1. an Internal Review Officer in Services Australia; and/or
2. the Australian Information Commissioner.

Note 1: There are no fees for these reviews.

Applying for an internal review by an Internal Review Officer

If you apply for internal review, a different decision maker to the Services Australia delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be:

- made in writing;
- made within 30 days of receiving the decision; and
- sent to the address for correspondence set out above (or be delivered to any Centrelink service centre).

Note 2: You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

If you do not receive a decision from an Internal Review Officer in Services Australia within 30 days of applying, you can ask the Australian Information Commissioner for a review of the original FOI decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can **lodge your application**:



PO Box 7820 Canberra BC ACT 2610

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

Note 3: The Office of the Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

Important:

- If you are applying online, the application form the 'Merits Review Form' is available at www.oaic.gov.au.
- If you have one, you should include with your application a copy of Services Australia's decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to Services Australia's decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act, There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.