



Australian Government

Department of Immigration and Border Protection

12 June 2014

In reply please quote:

FOI Request FA14/06/00439

File Number ADF2014/20147

Deep Thought

Sent by email to: foi+request-646-a77d2f92@righttoknow.org.au

Dear Deep Thought

Freedom of Information request – Notice of charge decision following applicant contention that charge be reduced or not imposed (s 29(8))

This notice of decision refers to your request received by the Department of Immigration and Border Protection (the Department) on 11 June 2014 seeking access under the *Freedom of Information Act 1982* (the Act) to the following documents:

I write to you under the FOI act to request the Contract between the Department of Immigration and Border Protection and Transfield Services for the Manus Island Regional Processing Center.

I refer to your email of 12 June 2014 in which you requested a total reduction of charges pursuant to s 29(5)(a) of the Freedom of Information Act 1982 (Act), on the grounds of financial hardship and pursuant to s 29(5)(b), on the grounds of public interest.

I have decided not to vary the original assessment of the charge. The amount you are liable to pay is \$407.75. The reasons for my decision under s 29(4) are set out below.

Reasons for my decision

I have considered the following:

- whether payment of the charge, or part of it, would cause financial hardship to the applicant or a person on whose behalf the application was made, and
- whether giving access to the document in question is in the general public interest or in the interest of a substantial section of the public.
- The arguments you have put forward in your email of 12 June 2014;
- Information already publically available surrounding Transfield Services delivering contracted services on offshore processing centres;
- whether disclosure of a document would advance the objects of the Act;
- the applicant can be expected to derive a commercial or personal benefit or advantage from being given access and it is reasonable to expect the applicant to meet all or part of the FOI charge;

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- the vast majority of information in the documents has already been published by an agency and the documents do not add to the public record;
- the applicant has requested access to a substantial volume of documents and significant work would be required to process the request;
- the document is similar to a document that the agency has published on its website under s 11C of the Act;
- reduction or waiver of the charge would enhance the agency-client relationship;
- the agency was able to identify and retrieve the document easily and at marginal cost;

I have determined that the disclosure of the document in question is not in the general public interest or in the interest of a substantial section of the public for a variety of reasons.

The department has recently (both within the month of May 2014) released detention service provider contracts which specify the expectations and services to be provided for offshore detention centres. Our disclosure log has two particular publications which promote transparency of the types of services your FOI request surrounds. Those publications are as follows:

1. 12 May 2014 – Transfield Services contract for the provision of services on Nauru
2. 22 May 2014 – G4S contract for Manus Island and G4S performance reports

In addition to the two above disclosures, during November 2011 the department released a redacted version of the detention services contract that was in place at that particular time. This contract was for the purposes of discharging functions at both onshore and offshore detention centres discharged by Serco.

The Serco contract was vast, consisting of 972 folios of contractual information. The Transfield Services contract noted above is 94 pages. The G4S contract noted above is 98 pages. Your current request consists of 156 pages however does not include the contract for both services on both Nauru and Manus Island.

In addition to these contracts the department has also recently made a disclosure dated 30 May 2014 detailing information within the Transfield Services subcontract with Wilson Security. This document provides a range of information surrounding the aspects of services to be provided offshore.

The previous release of these various contracts (4 in total, 3 in the space of the last month) provide insight into the department's expectations and provisions of services that the detention service provided were or are contracted to provide.

You have specifically advised you're seeking a total reduction in fees and charges associated with this request as release of the information will:

'... help to further advance public debate around the very important and contentious issue of Mandatory Detention of Refugees by the Australian Government and its Contractors.'

In my opinion the four separate contracts that are readily available for the community to view provide an in depth understanding of the administration and management of detention centres.

You have made reference to an inquiry by the Legal and Constitutional Affairs References Committee of the Australian Senate. There is an ongoing Senate enquiry surrounding the events of February 2014 in which the department is engaging when required and cooperating in this particular matter.

As this particular matter is receiving appropriate attention within a forum outside FOI I find any FOI release wouldn't promote nor advance public debate considering the Senate are responsible for conducting independent activities which are ongoing. This inquiry isn't solely focusing on the contract you are requesting under FOI, more so the events that took place in February 2014.

If your statement surrounds questions taken within Senate Estimates themselves, the department routinely answers and takes questions on notice surrounding questions received within the Senate Estimates forum. This is yet another demonstration to the fact the department is engaging and being transparent in its functions surrounding Nauru & Manus Island. I find these matters only further add to the reason the charge should be imposed as these forums provide ongoing public insight into many matters of public interest.

This existing publically available information identified above also informs the public of government accountability and transparency about a wide range of contractual functions and expectations.

I am now required to determine if imposing the charge would cause you financial hardship.

When considering whether to waive or reduce the charge on financial hardship grounds, I find you have not submitted any specific information to demonstrate the fee would cause you financial hardship. I'm not satisfied that paying the charge as imposed would cause you a sufficient degree of financial hardship to warrant a reduction or waiver of the charge.

I have determined that the payment of the charge, or part of it, wouldn't cause financial hardship.

For the above reasons I have decided not to vary the original assessment of the charge.

Next steps in processing your request

As the charge exceeds \$100, you must pay a 25% deposit of \$101.94, in accordance with regulation 12 of the Freedom of Information (Charges) Regulations 1982 (the FOI Charges Regulations).

The deposit will be refunded if the Department fails to make a decision on your request within the statutory time limit.

Please note that if you choose to pay the deposit only, while the Department will be under an obligation to provide you with the decision by the due date, the documents will not be provided until you have paid the balance of the charges (s.11A(1)(b) of the Act and Regulation 11 of the FOI Charges Regulations).

How to pay the charge

The deposit can be paid by cheque, money order or credit card. Cheques and money orders should be made payable to "Collector of Public Monies DIBP" and sent to:

FOI & Privacy Policy Section
Department of Immigration & Border Protection
PO Box 25
BELCONNEN ACT 2616

If you wish to pay by credit card, please fill out the attached credit card authorisation form and forward to FOI & Privacy Policy Section at the above address, or email to foi@immi.gov.au.

Time in which to respond

Under the Act you have 30 days from the date of this notice to provide the Department with a response to my decision and either agree to pay the charges or seek an internal review of my decision. Your full review rights are set out in the next section, headed 'Review Rights'.

Therefore, you must provide the Department with a written response as to how you wish to proceed by close of business Monday 14 July 2014.

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Department my decision. Any request for internal review must be provided to the Department by the date set out above. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by an officer other than the original decision-maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

Freedom of Information
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi@immi.gov.au

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at www.oaic.gov.au.

How to make a complaint about the handling of this FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the Act. Information about how to submit a complaint is also available at www.oaic.gov.au.

Contacting the FOI Section

If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ashley Smith', written over a faint horizontal line.

Ashley Smith

FOI Officer

FOI & Privacy Policy Section

Ministerial, Executive and Accountability Branch

Department of Immigration and Border Protection

Phone (02) 6225 8037

Email foi@immi.gov.au