



21 October 2020

Our reference: LEX 58235

Mr John Smith

Only by email: [foi+request-6665-35209a95@righttoknow.org.au](mailto:foi+request-6665-35209a95@righttoknow.org.au)

Dear Mr Smith

**Freedom of Information Request – Reconsideration of Charges**

I refer to your email dated 21 September 2020, contending that a charge should not be imposed in relation to the processing of your request dated 31 August 2020, made under the *Freedom of Information Act 1982 (FOI Act)*. You requested access to:

'I wish to obtain a copy of the terms of agreement, and three examples of completed purchase orders; between Services Australia and Hays, regarding the procurement of Debt Officer roles at the Box Hill office.

Please include alongside the three examples of completed purchase orders, the amount by which each purchase order has been utilized by the department.

Additionally, please include the salary/wages paid per labour hire employee by Hays; and the amount paid to Hays per employee.

If only aggregate figures are available, please provide those aggregate figures while indicating the total number of labour hire employees those aggregate figures are referable to.'

**Background**

Services Australia has located seven documents (totalling 46 pages) relevant to your request.

On 21 September 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 \$96.00 (**preliminary charge**).

The preliminary charge was calculated as follows:

Search and retrieval time: 2 hours, at \$15.00 per hour:	\$30.00
Decision-making time (*after deduction of 5 hours): 3.3 hours, at \$20.00 per hour	\$66.00
<b>TOTAL</b>	<b>\$96.00</b>

\*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 21 September 2020, you responded to the preliminary charge notification, contending that the preliminary charge should be reconsidered (**reconsideration request**). In that correspondence you stated:

'I contend that the charge should not be imposed; for public interest reasons including transparency of government finances, and procurement practices.'

I have reconsidered the preliminary charge and decided that you are liable to pay a charge of \$96.00 for the processing of your FOI request. The reasons for my decision are set out below.

### What I took into account

In reaching my decision I took into account:

- the preliminary charge;
- your reconsideration request;
- the documents falling within the scope of your request;
- relevant case law;
- the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982 (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, 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 in part, the agency must give the applicant written notice of the decision and the reasons for the decision.

### Reconsideration of the 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 consultations with the relevant business area within Services Australia to:

- identify the relevant document;
- compile the relevant document; and
- retrieve the relevant document.

The preliminary charge estimated 2 hours of search and retrieval time. The business area that undertook the searches confirmed that this was an accurate reflection 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 estimated the time required to:

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

The preliminary charge estimated 8.3 hours for decision-making.

This included 2 minutes per page to review the document, and an additional 1 minute per page to redact exempt material from the documents. I have carefully reviewed the documents and I am satisfied that this is an accurate estimate of the time that would be required for this component of the decision-making process.

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.

Having reviewed the documents, I consider that a number of exemptions or conditional exemptions are likely to apply to the documents. Therefore, I consider that 4 hours is an accurate assessment of the time required to prepare a statement of reasons for the decision.

In summary, I agree with the calculations set out in the preliminary charge. Therefore, I have decided that you are liable to pay a charges of \$96.00 for the processing of your request. I consider that this charge accurately reflects the lowest reasonable cost for processing your request.



## **Reconsideration of the Preliminary Charge – other considerations**

### 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.

Paragraph 4.103 of the Guidelines provides:

‘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 or submissions to suggest that payment of the charge would cause yourself financial hardship. Therefore, on the evidence before me, I have decided not to reduce or waive the charge on financial hardship grounds.

### The public interest

Your reconsideration request disputed the Preliminary Charges on public interest grounds. My consideration of these matters is set out below.

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 4.107 and 4.108 of the Guidelines relevantly 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 (s 29(1)(f)(ii)). 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.

... [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.’

I also refer to paragraph 4.105 of the Guidelines which provides:



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

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 documents and the context surrounding its potential release.

Public interest factors in favour of reducing or waiving a charge can include:

- the level of public interest in the document;
- the general public interest in allowing access to information (including government policy) under the FOI Act;
- the general public interest in openness of administration; and
- promoting the objects of the FOI Act, including:
  - increasing scrutiny, discussion, comment and review of Government activities;
  - facilitating and promoting public access to information, promptly and at the lowest reasonable cost; and
  - informing the public on matters of public importance or interest, and assisting participation in debate or discussion.

Having considered these factors and the general public interest in the transparency of government finances and procurement practises. I have found that Services Australia satisfies the public interest by reporting on its expenditure and procurement practises in its annual report. This report is publicly available and can be accessed on Services Australia's website. The most recent 2018-19 report which can be accessed via the following link:

<https://www.servicesaustralia.gov.au/organisations/about-us/annual-reports/annual-report-2018-19>

I also note that the procurement practices of Services Australia are further scrutinised in a number of public forums such as parliamentary committees.

Finally, 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 do not consider that releasing the documents in scope would assist or further inform the public debate on this topic as information relevant to Services Australia expenditure and procurement practices is already publically available. 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.



## Conclusion

I am satisfied that the reconsidered 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 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 reconsidered charge of \$96.00 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 revised 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](mailto:FOI.LEGAL.TEAM@servicesaustralia.gov.au).

If we do not hear from you within 60 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 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](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 58235**; 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](mailto:FOI.LEGAL.TEAM@servicesaustralia.gov.au) to advise us of your payment. Please quote reference number **LEX 58235** in this correspondence.



**Australian Government**  
**Services Australia**

### **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 the following address:

Freedom of Information  
Services Australia  
PO Box 7820  
CANBERRA ACT 2610

Or by email to [FOI.LEGAL.TEAM@servicesaustralia.gov.au](mailto:FOI.LEGAL.TEAM@servicesaustralia.gov.au).

### **Further assistance**

If you have any FOI questions please email [FOI.LEGAL.TEAM@servicesaustralia.gov.au](mailto:FOI.LEGAL.TEAM@servicesaustralia.gov.au).

Yours sincerely

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



## **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**:



**Australian Government**  
**Services Australia**

Online: [www.oaic.gov.au](http://www.oaic.gov.au)

Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Email: [enquiries@oaic.gov.au](mailto: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](http://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](http://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](http://www.ombudsman.gov.au)

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