

26 April 2013



Australian
Broadcasting
Corporation

Ms Margot Kingston

Corporate Affairs

ABC Ultimo Centre
700 Harris Street
Ultimo NSW 2007

GPO Box 9994
Sydney NSW 2001

Tel. +61 2 8333 5261
abc.net.au

By email: foi+request-67-b4df5f55@righttoknow.org.au

Dear Ms Kingston

FOI REQUEST - REFERENCE NUMBER 2013-15

I refer to your email of 4 March 2013 regarding the ABC's estimate of charges in relation to your request for access to documents under the *Freedom of Information Act* 1982 (FOI Act).

I note that you have contended that the charge which was set out in the ABC's letter of 4 March 2013 should not be imposed.

In light your request, I am required by s29(4) of the FOI Act to decide whether the charge will be reduced or not to be imposed. I am authorised by the Managing Director under section 23 of the FOI Act to make decisions in respect of requests made under that Act.

I note that my decision in relation to your contention was required to be made by 3 April 2013. Given that more than 30 days has elapsed since you notified the ABC of your contention regarding charges, and that a decision was not made during that time, a decision is deemed to have been made under s29(7) of the FOI Act that the charge remains the same as the preliminary estimate. You are therefore entitled to seek a review of that deemed decision under s54B of the FOI Act. As indicated in my email to you of 9 April 2013, I confirm that the ABC will extend the period in which you may apply for internal review by a further 30 days from the date of this letter.

Notwithstanding the deemed refusal, following is my decision in relation to the imposition of a charge in this matter. If you do not wish to proceed on the basis of this decision, you should consider whether you wish to pursue a review of the deemed refusal.

DECISION IN RELATION TO IMPOSITION OF A CHARGE

Section 29(5) stipulates that, in addition to any matter which I may take into account, I must consider whether the proposed charge would cause financial hardship, and also whether giving access to the documents in question is in the general public interest, or in the interest of a substantial section of the public.

Financial Hardship

You have stated that “if you do not waive fees I will have to ask readers to donate again, which does not seem right given that the ABC is our public broadcaster and should be voluntarily transparent”. The FOI Act specifically provides for agencies to impose charges for the work involved in providing access to documents under the FOI Act. The imposition of charges in this matter is entirely consistent with that legislation.

Your request that charges be waived does not claim that the charges will cause financial hardship to anyone.

Public Interest

I have had regard to whether the documents you are seeking access to are in the interests of the general public or a substantial section of the public.

You have provided the following material as evidence that the documents are in the public interest:

- Letter from Margo Kingston to Mark Scott dated 4 February 2013 published on an “*Australians for Honest Politics*” website;
- Blog post published by Peter Clarke on 15 February 2013 on the *Australians for Honest Politics* website; and
- Blog post published by Peter Clarke on 27 February 2013 on the *Australians for Honest Politics* website.

The Guidelines issued by the Office of the Australian Information Commission (OAIC), in particular *Part 4 – Charges for Providing Access*, expressly state (at paragraph 4.52) that:

“In applying s29(5)(b) it is important to identify the ‘general public interest’ or the ‘substantial section of the public’ that would benefit from disclosure. The FOI applicant may benefit from disclosure, but the for purposes of s29(5)(b) there should also be a benefit flowing more generally to the public or a substantial section of the public. This will ordinarily require consideration both of the content of the documents and the context of their release – for example, whether the documents relate to a matter of public debate or for decision by government.”

I note that there is no presumption that the public interest test is satisfied by reason only that the applicant is a journalist or a non-profit organisation.

The documents you have relied on as evidence of the public interest in this matter are not published widely, and are limited to one website. At the date of this decision, it appears that 17 people have posted comments in response to the blogs you have identified. I am satisfied that there is small section of the online community which appears to be interested in this issue. There is no evidence that this issue is in the general public interest, or in the interests of a ‘substantial section’ of the general public.

I have had regard to whether the documents will be used in the preparation of a story for publication that is likely to be of general interest. Given the current level of interest that has been demonstrated in published stories, it is difficult to see that any such future stories will generate significant public interest.

In support of a public interest contention, I have had regard to the fact that disclosure of the documents may better inform the public as to why or how the ABC's decisions are made.

The OAIC Guidelines also state (at paragraph 4.47):

"It is open to an agency ... to impose a charge even though it would cause financial hardship to the applicant, or a public interest purpose for disclosure has been established. However, there is no onus on an applicant to justify his or her case. It is for an agency ... to reach a decision on the merits of the request".

I have reviewed the estimate of charges, and I am satisfied that the estimate fairly reflects the work involved in providing access to the documents. I have also reviewed the merits of the request.

Taking all of these matters into account, I have decided to reduce the estimated charge by 10 per cent.

Yours sincerely



Judith Maude

Head, Corporate Governance
Direct line 02 8333 5316