



Our reference: LEX 58707

Posty

Only by email: [foi+request-6748-6e7b0120@righttoknow.org.au](mailto:foi+request-6748-6e7b0120@righttoknow.org.au)

Dear Posty

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

I refer to your email dated 3 October 2020, contending that a charge should not be imposed in relation to the processing of your request dated 24 September 2020, made under the *Freedom of Information Act 1982* (FOI Act). You request access to:

I request, under the Freedom of Information Act 1982, copies of the following documents:

All documents contained within the files on your "Operational Blueprint" portal:

- Optical surveillance 110-11040000  
(<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040000-01.html> ) Requesting referral for optical surveillance 110-11040010  
(<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040010-01.html>)
- Referring a case to a provider for optical surveillance 110-11040020  
(<http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040020-01.html> ) Optical surveillance report received from provider 110-11040030  
( <http://operational.humanservices.gov.au/public/Pages/compliance-and-reviews/110-11040030-01.html> )'

**Background**

Services Australia has located 4 documents (totalling 20 pages) relevant to your request.

On 30 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 \$30.00 (**preliminary charge**).

The preliminary charge was calculated as follows:

Search and retrieval time: two hours, at \$15.00 per hour:	\$30.00
<hr style="border: 0.5px solid black;"/>	
TOTAL	\$30.00

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



## 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 a whole or in part, the agency must give the applicant written notice of the decision and the reasons for the decision.

## Reconsideration of the preliminary charge

On 30 September 2020, you responded to the preliminary charge notification, contending that the preliminary charge should be reconsidered. I have reconsidered the preliminary charge and my conclusions are 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.

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.

Public interest factors in favour of reducing or waiving a charge 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 reviewed the documents, 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 documents you have requested. Therefore, I have decided not to waive the charge on public interest grounds.

#### Other considerations

I have reconsidered the preliminary charge and decided to exercise my discretion to waive the charge in full.

#### **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 required deposit); or
- b) if applicable, the day following the notification to the applicant of a decision not to impose the charge.

Therefore, you should expect a decision from us by 26 November 2020.

#### **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

#### **Alexandra**

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**:

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.