



**Australian Government**  
**Department of Immigration and Border Protection**

19 September 2014

FOI Request FA 14/08/00396  
File Number ADF2014/28290

To Robin de Garis  
Right to Know

Email: [foi+request-711-b8e11bc8@righttoknow.org.au](mailto:foi+request-711-b8e11bc8@righttoknow.org.au)

Dear Robin de Garis

**Charge Notice under s.29(1) - *Freedom of Information Act 1982***

This letter refers to your request received on 6 August 2014 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

*Documents & Emails containing any of the terms "Border Force", "Australian Border Force", "ABF", "Border Control Australia", "BCA"; referring to the "Branding", "Naming", "Marketing" or "Positioning" of the ABF dated prior to 09 May 2014 (the announcement) and after the 2013 election (7 September 2013).*

I am writing to advise you of my decision that you are liable to pay a charge for processing this request.

I am an officer authorised under s.23(1) of the FOI Act to make decisions in relation to FOI requests, including the decision to impose a charge.

As provided under s.29 of the FOI Act and the *Freedom of Information (Charges) Regulations 1982* (the Regulations), I have undertaken a preliminary assessment of the amount of charges you are liable to pay and have assessed that to be \$522.97.

**Basis for my preliminary assessment of the charge**

I have assessed the work the department would need to do to process your request and have calculated the following breakdown of charges.

Document estimate

The documents within the scope of your request consist of two items of correspondence and Cabinet related material.

Number of relevant documents: 3 documents

Number of relevant pages: 152 pages

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Processing charges

<b>Search and retrieval</b>		
<b>Task</b>	<b>Time (hours)</b>	<b>Cost @ \$15/hr</b>
Search and retrieval of relevant electronic and registry files	0.17	\$2.50
Search and retrieval of relevant pages in file	0.75	\$11.25
Preparation of schedule of documents	0.15	\$2.25
Search and retrieval subtotal	1.07	\$16.00

<b>Decision making</b>		
<b>Task</b>	<b>Time (hours)</b>	<b>Cost @ \$20/hr</b>
Examination of documents	12.67	\$253.33
Preparation of documents for release	12.25	\$245.00
Consultation with third parties	0.00	\$0.00
Preparation of notice of access decision	5.43	\$108.64
Decision making subtotal (before deduction of 5 free hours)	30.35	\$606.97
Decision making subtotal (after deduction of 5 free hours)	25.35	\$506.97

<b>Estimated totals and deposit</b>	
Estimated total	<b>\$522.97</b>
Deposit required	<b>\$130.74</b>

The cost associated with the task of examining and preparing documents for release is significant because the documents within the scope of your request include Cabinet related material.

In accordance with the Information Commissioner guidelines and the FOI Guidance Notes, issued by the Department of Prime Minister and Cabinet (PM&C) the department is required to consult PM&C and actively consider any advice provided by PM&C.

**The time you have to respond and what you need to do**

The FOI Act provides you with 30 days to respond, in writing, to this notice, which is Sunday 19 October 2014.

However, as this date falls on a non-working day, s.36(2) of the *Acts Interpretation Act 1901* provides that the latest date you may respond is the next working day, which is Monday 20 October 2014.

Therefore, by Monday 20 October 2014 you must do one of the following things:

- agree to pay the charge;
- contend that the charge has been wrongly assessed, or should be reduced or not imposed and explain your reasons; or
- withdraw your request.

In deciding whether a charge should be reduced or not imposed, s.29(5) of the Act requires me to take into account:

- whether payment of the charge, or part of it, would cause you financial hardship
- whether giving access to the documents is in the general public interest or in the interest of a substantial section of the public
- any other relevant matter.

Please note that if you do not provide a written response by Monday 20 October 2014 your request will be taken to have been withdrawn (by you) under s.29(2) of the Act.

### **Payment**

As the charge exceeds \$100, you will be required to pay a deposit equal to 25% of the full charge imposed (\$130.74).

The deposit will be refunded if the department fails to make a decision on your request within the statutory time limit. The deposit can be paid by cheque, money order, credit card or Electronic Funds Transfer (EFT).

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](mailto:foi@immi.gov.au).

If you wish to pay by Electronic Funds Transfer (EFT) the department's bank account details are as follows:

Bank:	CBA
BSB:	062987
Account Number:	10016044
Account Name:	DIBP Official Administered Direct Credit Receipts Account

When making the transfer you will need to quote the number of your request so that your payment can be identified by our Finance area. Failure to do so may result in payments not being identified as FOI related and could result in processing delays.

Please advise FOI when you have made the payment made by direct credit so that we can contact the Finance area and they can issue a receipt.

You should also be aware that payments by direct credit are not processed in real time. There is at least a one day delay between somebody paying money into the department's account and notification of the payment via our bank account statement.

**Processing period suspended**

The period for processing your request is suspended from the day that you are deemed to have been 'notified' of the charge and resumes on:

- the day you indicate that you 'agree' to pay the charge or
- the day on which this agency makes a decision not to impose a charge.

You may indicate your agreement to pay the charge by either paying the deposit or paying the charge in full.

**Contacting the FOI Section**

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

Yours sincerely



Janelle Raineri  
Authorised decision maker  
FOI & Privacy Policy Section  
Ministerial, Executive and Accountability Branch  
Department of Immigration and Border Protection

Phone (02 6264 1580  
Email [foi@immi.gov.au](mailto:foi@immi.gov.au)

**Attachments**

- Attachment A - Extract of relevant legislation
- Credit Card Deduction Authorisation Form

## Attachment A – Extract of relevant legislation

### 23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

### 29 Charges

- (1) Where, under the regulations, an agency or Minister decides that an applicant is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document, the agency or Minister must give to the applicant a written notice stating:
  - (a) that the applicant is liable to pay a charge; and
  - (b) the agency's or Minister's preliminary assessment of the amount of the charge, and the basis on which the assessment is made; and
  - (c) that the applicant may contend that the charge has been wrongly assessed, or should be reduced or not imposed; and
  - (d) the matters that the agency or Minister must take into account under subsection (5) in deciding whether or not to reduce, or not impose, the charge; and
  - (e) the amount of any deposit that the agency or Minister has determined, under the regulations, that the applicant will be required to pay if the charge is imposed; and
  - (f) that the applicant must, within the period of 30 days, or such further period as the agency or Minister allows, after the notice was given, notify the agency or Minister in writing:
    - (i) of the applicant's agreement to pay the charge; or
    - (ii) if the applicant contends that the charge has been wrongly assessed, or should be reduced or not imposed, or both—that the applicant so contends, giving the applicant's reasons for so contending; or
    - (iii) that the applicant withdraws the request for access to the document concerned; and
  - (g) that if the applicant fails to give the agency or Minister such a notice within that period or further period, the request for access to the document will be taken to have been withdrawn.
- (2) If the applicant fails to notify the agency or Minister in a manner mentioned in paragraph (1)(f) within the period or further period mentioned in that paragraph, the applicant is to be taken to have withdrawn the request for access to the document concerned.
- (3) An agency or Minister must not impose a charge in respect of a request for access to a document, or the provision of access to a document, until:
  - (a) the applicant has notified the agency or Minister in a manner mentioned in paragraph (1)(f); or
  - (b) the end of the period or further period mentioned in that paragraph.

## Attachment A – Extract of relevant legislation

- (4) Where the applicant has notified the agency or Minister, in a manner mentioned in subparagraph (1)(f)(ii), that the applicant contends that the charge should be reduced or not imposed, the agency or Minister may decide that the charge is to be reduced or not to be imposed.
- (5) Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:
  - (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and
  - (b) 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.
- (6) If the applicant has notified the agency or Minister in the manner mentioned in subparagraph (1)(f)(ii), the agency or Minister must take all reasonable steps to enable the applicant to be notified of the decision on the amount of charge payable as soon as practicable but in any case no later than 30 days after the day on which the applicant so notified the agency or Minister.
- (7) If:
  - (a) that period of 30 days has elapsed since the day on which the agency or Minister was so notified; and
  - (b) the applicant has not received notice of a decision on the amount of charge payable; the principal officer of the agency, or the Minister, as the case requires, is, for all purposes of this Act, taken to have made, on the last day of the period, a decision to the effect that the amount of charge payable is the amount equal to the agency's or Minister's preliminary assessment of the amount of the charge mentioned in paragraph (1)(b).
- (8) If:
  - (a) the applicant makes a contention about a charge as mentioned in subsection (4); and
  - (b) the agency or Minister makes a decision to reject the contention, in whole or in part; the agency or Minister, as the case requires, must give the applicant written notice of the decision and of the reasons for the decision.

Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.
- (9) A notice under subsection (8) must also state the name and designation of the person making the decision and give the applicant appropriate information about:
  - (a) his or her rights with respect to review of the decision; and
  - (b) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
  - (c) the procedure for the exercise of those rights; including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (10) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (8).
- (11) A notice under subsection (8) is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

## Attachment A – Extract of relevant legislation

### 31 Decision to impose charge—extended period for processing request

#### *Scope*

- (1) This section applies if:
  - (a) on a particular day (the ***charge notice day***) an applicant in relation to a request receives a notice under subsection 29(1) or (6) to the effect that the applicant is liable to pay a charge in respect of the request; and
  - (b) the notice is received before the end of the period (the ***processing period***) applicable under paragraph 15(5)(b) in relation to the request (or that period as extended).

#### *Processing period to be calculated disregarding period when charge unpaid*

- (2) In working out the length of the processing period (or that period as extended) for the purposes of paragraph 15(5)(b), disregard the number of days in the period starting on the charge notice day and ending on the earliest occurring of the following days:
  - (a) the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations), whether or not the decision to impose the charge has been considered under section 29, or is the subject of a review under this Act;
  - (b) if the amount of the charge is changed under section 29, or following a review under this Act—the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations) as changed following the review;
  - (c) if, under section 29, or following a review under this Act, a decision is made with the effect that the charge is not imposed—the day the applicant is notified of the decision.

Note: A decision under section 29 relating to the imposition of a charge or the amount of a charge may be the subject of an internal review (see Part VI), an IC review (see Part VII) or review by the Tribunal (see Part VIIA).