



Australian Government

Department of Health

Department Ref: 021-1415

Mr Martin Hardie

By email to: foi+request-717-6e0fdeb@righttoknow.org.au

Dear Mr Hardie

NOTICE OF DECISION TO IMPOSE CHARGE

I refer to your emails of 19 and 20 August 2014 seeking waiver or reduction of the charges in relation to your request for access under the *Freedom of Information Act 1982* (the FOI Act) to documents relating to the:

'proposed or actual investigation by ASADA into the Essendon Football Club, including the joint press conference held on 7 February 2013, and the arrangements for the AFL ASADA joint investigation.'

I am an authorised decision-maker under section 23 of the FOI Act. This letter sets out my decision on your request for waiver or reduction of the charges.

Decision

I have decided to impose the charges in full.

My reasons for my decision are set out at **Attachment A**.

Effect of my decision

As a consequence of my decision, you are required to pay \$5,590 in charges. Before the processing of your request may continue, you must pay a 25% deposit of \$1,397.50. You will not receive access to any documents the decision-maker decides to release to you until the balance is paid.

Review rights

You are entitled to seek review of this decision. Your rights are set out at **Attachment B**.

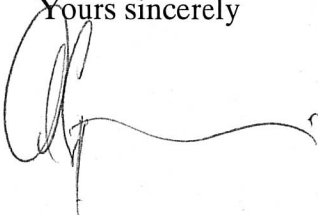
Relevant provisions

The FOI Act, including the provisions relevant to your request can be accessed from the ComLaw website using the following link: <http://www.comlaw.gov.au/Series/C2004A02562>.

Contacts

If you require clarification of any of the matters discussed in this letter you should contact the Department's FOI Unit on (02) 6289 1666 or via email at FOI@health.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to be 'AG', with a long horizontal flourish extending to the right.

Andrew Godkin
First Assistant Secretary
National Integrity of Sport Unit

17 September 2014

ATTACHMENT A – REASONS FOR DECISION

Material taken into account

In making my decision, I had regard to the following:

- The terms of your request for waiver, and your submissions related to this;
- The legal proceedings in the Federal Court following on from the ASADA investigation;
- The relevant provisions of the FOI Act, particularly section 29; and
- Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines) – these are available on the Office of the Australian Information Commissioner's website.

Grounds for waiver or reduction of charges

In accordance with subsection 29(5) of the FOI Act, in determining whether to waive or reduce the charges, as a decision-maker, I have taken into account:

- a) whether paying the charges would cause you financial hardship, and
- b) whether giving access to the document is in the interests of the public, or a substantial section of the public.

I have given consideration to your contentions for waiver or reduction of the charge and am not aware of any other relevant matters than the above considerations that should be considered.

Will the payment of the charge cause financial hardship?

Financial hardship means more than an applicant having to meet a charge from his or her own resources (FOI Guidelines paragraph 4.50).

In your email to me of 19 August 2014, you stated that '...in any event [you] would not be in any position to pay such an amount personally and that it would cause significant financial hardship if [you were] to pay the amount you seek and hence contend that the charge should be waived on that basis.'

You have not provided any evidence in support of your claim of financial hardship. An applicant relying on this ground would ordinarily be expected to provide some evidence, such as evidence of income support payments or a pension (FOI Guidelines paragraph 4.51).

In your follow up email of 20 August 2014, providing further submissions on your contention for waiver of fees, you said that: 'waiver of the fees would allow for the release of the information to flow to the public given that I am an academic researcher writing scholarly articles and a book on the topic.' In my view, this is not evidence of financial hardship. I find that you have not substantiated a case for reduction or waiver of charges on this basis.

Is the giving of access in the public interest?

The FOI Act requires me to consider 'whether the giving of access to the documents in question is in the general public interest or the interest of a substantial section of the public'

(paragraph 29(5)(b)). The issue is not whether it is in the public interest to waive or reduce a charge, nor whether it is in the public interest for a particular applicant to be granted access to documents. It is not enough that the information in the documents sought is interesting or of curiosity value to the public at large.

I accept that the topic of your request is one in which there is currently a degree of interest and scrutiny (including through a current Federal Court matter) and there could be general public interest in understanding the processes of Government and role of Departments.

You have submitted that '[t]here is a clear public interest in the upholding of the law and to ensure that public authorities remain within the boundaries of their statutory power.' While I would agree with this generally, it is not evident to me that giving access to documents within your request would add anything materially to consideration of this than is being considered in the context of the current Federal Court matter.

I also take into account that the range of documents you have requested is in broad terms. I consider the scope of your request is much wider than is reasonably necessary for the purpose of contributing to public discussion or analysis or than relate to the specific concerns you have made. In my view, dealing with the request on these terms would include substantial volumes of material that would be resource intensive to process while adding little to scrutiny or discussion of the Government's activities or public participation in Government processes.

I consider that your suggestion that you would be 'happy to confine [your] request to documents that mention ASADA and/or Essendon Football Club are mentioned' is unlikely to narrow the scope of the request.

On balance, I consider that there is not sufficient public interest in disclosure of the documents within the scope of your request to justify reducing any of the charges. I note that my decision on public interest goes only to the question of whether the charges should be imposed, and not to the issue of whether the documents should ultimately be disclosed.

YOUR REVIEW RIGHTS

If you are dissatisfied with this decision, you have certain rights of review available to you. You can apply for either internal review or Australian Information Commissioner (AIC) review. You do not have to apply for internal review before seeking AIC review:

- if you choose internal review, you can still apply for AIC review if you are dissatisfied with the internal review decision;
- if you choose AIC review, you will not be able to seek internal review of that decision and your only avenue will then be AAT review.

Details of the review options are set out below.

Internal Review

Under section 54B of the FOI Act, you may apply for an internal review of the decision. Your application must be made within 30 days of you receiving this notice (or such further period as the agency allows), or where access is granted to some documents and not others, 30 days after receiving this decision notice or 15 days of you receiving the documents to which you have been granted access (if any) – whichever is the longer period.

An internal review will be conducted by a different officer of this Department. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to:

FOI Coordinator (MDP 350)
Department of Health
GPO Box 9848
CANBERRA ACT 2601
Email: foi@health.gov.au

Australian Information Commissioner Review

Alternatively you may apply in writing for review by the Australian Information Commissioner. The Australian Information Commissioner can be contacted by:

E-mail: enquiries@oaic.gov.au
Phone: 1300 363 992

In making your application you need to provide:

- An address for notices to be sent (this can be an email address); and
- A copy of this decision

An application for AIC review must be made within 60 days of this notice (if you do not request an internal review) or within 60 days of notice of the internal review decision.

Administrative Appeals Tribunal review

You may also apply to the AAT for review of a decision made on Australian Information Commissioner review with which you are dissatisfied. (Note: if you are dissatisfied with an internal review decision you must apply for AIC review.)

The AAT is a completely independent review body with the power to make a fresh decision. Your application to the AAT should be accompanied by an application fee - currently \$861, which may be reduced in some instances.

The AAT has a help desk to advise on its procedures. More information is available on the AAT's website www.aat.gov.au.

Processing Complaints to the Australian Information Commissioner

You may also make a complaint to the Australian Information Commissioner about action taken by the Department in relation to your application. The complaint needs to be in writing and identify the agency against whom the complaint is made.

There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.