



Australian Government

Department of Health

Department Reference: IR 021-1415

Martin Hardie

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

Dear Mr Hardie

**NOTICE OF DECISION
INTERNAL REVIEW**

I refer to your request of 23 July 2014 to the Department of Health (Department) seeking 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.'

On 17 September 2014 the Department wrote to you outlining the decision to impose charges and not to grant your request for waiver or reduction of these charges on the basis that to do so would cause financial hardship to you or that the giving of access to the documents in question is in the general public interest.

On 24 September 2014 you applied for an Internal Review of that decision on the ground that you consider that the fees should be waived as disclosure is in the public interest.

I am an authorised decision-maker under section 23 of the FOI Act. I had no involvement in the original decision on your request. This letter sets out my decision on your internal review request.

Decision

I affirm the decision of 17 September 2014 to impose charges of \$5,590 in full.

Reasons for decision

Your request for consideration that charges be reduced or not imposed included a contention 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' and that 'release of the information would actually be of benefit to the public in so far as the facts concerning any alleged political and departmental involvement in the case would be better understood'. Your request for review of this decision referred to a public interest in 'the extent and nature of any political involvement in the case that may have compromised ASADA's independence'.

I have considered this matter with reference to the original request and subsequent correspondence between yourself and the Department. I consider both the request and the public interest claims that you have made to be very broad in nature.

I acknowledge the general interest in the topic. While I agree that there is a broad public interest in government organisations and public servants operating within their authority and that the independence of organisations is not compromised, I note that there are existing mechanisms through which government organisations and officials are held to account. It is not evident to me that giving access to the documents you have sought would add to these existing processes.

Further in relation to the broad nature of the request, I agree with the earlier decision that the scope of your request is wider than is reasonably necessary for the purpose of contributing to public discussion or analysis of an issue. I also agree that your proposal to limit the request to documents that mention ASADA and/or Essendon Football Club does not materially reduce the scope of the request.

As your request would require the diversion of significant resources, and notwithstanding the public interest matters that I have addressed, I have determined that it is appropriate that a fee be charged. In coming to this view I have taken into account the Guidelines issued by Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines¹), in particular paragraphs 4.49 and 4.59.

In reviewing the correspondence between you and the Department I have also noted reference in this material to your scholarly work and a book you are writing on the topic. To this end it is also a relevant consideration that you could be expected to derive a commercial or personal benefit or advantage from being given access to the material and it is reasonable to expect that the FOI charge is met (paragraph 4.49 of the FOI Guidelines refers).

I wish to stress that this decision relates entirely to the application of charges and does not relate to whether documents should ultimately be released. If you decide to pursue your request the Department will assess material in full accordance with the requirements of the FOI Act.

Review rights

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

Contacts

If you require clarification of any of the matters discussed in this letter you should contact me via the FOI Unit on 02 6239 1666.

Yours sincerely



Jaye Smith
First Assistant Secretary (A/g)
Office for Sport
22 October 2014

¹ Guidelines are published on the OAIC website at www.oaic.gov.au

Review Rights– following internal review

If you are dissatisfied with this decision, you may apply to the Office of the Australian Information Commissioner (OAIC) for Information Commissioner review of the decision (IC review). An application for IC review must be made within 60 days after the day on which you receive this notice.

The OAIC 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.

Although not required, you can set out the reasons for review in your application

Further information about applying for IC review is available on the OAIC website at:

<http://www.oaic.gov.au/freedom-of-information/foi-reviews> .

Proposed changes to FOI external review arrangements

The Freedom of Information Amendment (New Arrangements) Bill 2014 was introduced into the Australian Parliament in October 2014. If enacted this will repeal the *Australian Information Commissioner Act 2010* and remove provisions referring to the Information Commissioner from the FOI Act.

Until the legislation is changed, the right of external review remains with the Information Commissioner in the first instance. However, the Information Commissioner may exercise discretion under paragraph 54W(b) of the FOI Act to decide not to undertake a review and allow the application to proceed to the AAT without an IC review.

Under the proposed legislation, on the 1 January 2015 commencement date any application for Information Commissioner review that has been made but not determined by the Information Commissioner will be deemed to have been made to the AAT.

Administrative Appeals Tribunal review

You may apply to the AAT for review of a decision made on IC review with which you are dissatisfied.

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.