



Mark Simms

Via email: foi+request-7271-758cb912@righttoknow.org.au

Dear Mark Simms

Your Freedom of Information request – Charges decision

I refer to your request, received by the Department of Agriculture, Water and the Environment (**department**) on 7 May 2021 for access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to the following documents:

'I seek a copy of the report by Terry Bailey of O&G-Rosedale in relation to an application under section 10 of the ATSIHP Act'

My decision

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided to affirm the charge of \$208.77. My findings of fact and reasons for this decision are discussed below.

What I took into account

In reaching my decision, I took into account:

- your request dated 7 May 2021;
- your request for a reduction or waiver of the charge dated 10 June 2021;
- the preliminary assessment of charges dated 20 May 2021,
- the documents that fall within the scope of your request;
- consultations with departmental officers about:
 - the nature of the documents; and
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**); and
- the *Freedom of Information (Charges) Regulations 2019* (**Regulations**);
- the FOI Act.

Reasons for my decision

I have decided to affirm the charge of \$208.77. My findings of fact and reasons for this decision are discussed below.

Preliminary assessment of charge

On 20 May 2021, I wrote to you to advise you that I had decided to impose a charge of \$208.77 for processing your request.

My preliminary assessment of that charge was calculated as follows:

Search and retrieval time: 1 hours at \$15.00 per hour	\$15.00
Decision-making time: \$20.00 per hour	
Examining pages, redacting and scheduling documents	\$113.77
Consultation with 3 third parties at 2 hours per party	\$120.00
Writing statement of reasons	\$60.00
Deduction of 5 hours decision-making time*	-\$100.00
TOTAL	\$208.77

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

Your contentions

On 10 June 2021, you requested a reduction of the charge for processing your request under the FOI Act, on public interest grounds. Specifically, your correspondence provided:

'I wish to apply for a reduction of the fees applicable to this request as it concerns a matter of great public importance'

Financial hardship

Under section 29(5)(a) of the FOI Act, I am required to consider whether payment of the charge would cause financial hardship to you.

Paragraph 4.101 of the Guidelines relevantly provides:

Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself and your family, or other people for whom you are responsible.

The Guidelines further provide that an applicant relying on the grounds of financial hardship would ordinarily be expected to provide some evidence of financial hardship, such as receipt of an income support payment or evidence of income, debts or assets. In this regard, I note that you have not provided any evidence relating to financial hardship grounds.

As you have not provided evidence in relation to your financial status, I am not satisfied that the payment of the charge would cause financial hardship to you. As such, I do not consider the financial hardship grounds to apply in this instance.

Public interest

Under section 29(5)(b) of the FOI Act, I am required to consider whether giving access to the documents would be in the general public interest or the interest of a substantial section of the public.

Paragraph 4.107 of the Guidelines relevantly provides:

An applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that would benefit from this disclosure (s29(1)(f)(ii)). This may require consideration both of the content of the documents requested and the context in which their public release would occur. Matters to be considered include whether the information in the documents is already publicly available, the nature and currency of the topic of the public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents.

I have noted your submission that the matter relates to public importance. You have not provided any further explanation or submissions as to why the matter is in the public interest. I am not satisfied that it would be in the general public interest or the interest of a substantial section of the public to give access to the documents without application of the charges in full. This is because no reasoning has been provided as to the way in which public benefit will flow from release of the documents and the content and context of the documents from which public interest would arise. I have reviewed your requested documents and they do not contain information, disclosure of which would be in the general public interest. As such, I have decided to affirm the charge.

Other matters

Under section 29(5) of the FOI Act, I am also not limited in regard to the matters I may consider. The department charges in accordance with the FOI Act and the *Freedom of Information (Charges) Regulations 2019*. Each FOI request is calculated according to the documents relevant to that request.

As you have not raised any other matters, I have not considered any further matters than above.

Payment details

If you would like the department to continue processing your request, you must respond to the department within 30 days after receiving this notice. If you do not respond within 30 days, your request will be taken to have been withdrawn and no further action will be taken by the department.

As the charge exceeds \$100, you are required to pay a deposit of \$52.19. You may, of course, elect to pay the charge in full at this point.

Payment can be made by direct deposit to:

A/C Name:	DAWE Departmental Account
Branch:	London Circuit, Canberra
Bank:	Reserve Bank
BSB:	092 009
A/C No.	111 698
ABN No:	34 190 894 983

Please include the FOI reference number (LEX-22840) in the subject field and send an email with notification of payment to foi@awe.gov.au as soon as it has been made.

If you are not able to pay by direct deposit, please contact the department for assistance.

Time periods of 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 applicant was notified of the charge until the day after the charge (or deposit) is paid.

You can ask for a review of my decision

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to foi@awe.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

You can also make a complaint to the Commonwealth Ombudsman if you have concerns about how the department handled your request.

Further assistance

If you have any questions, please email foi@awe.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Barker', with a stylized, wavy line extending from the end.

James Barker
Assistant Secretary
Heritage, Reef and Wildlife Trade Division

17 June 2021

