



Australian Government

Department of Health

Department References: FOI 2431

Ms Lucy Lovich

via email: foi+request-7387-85ce1749@righttoknow.org.au

Dear Ms Lovich

**NOTICE OF DECISION - FREEDOM OF INFORMATION
INTERNAL REVIEW OF DECISION TO IMPOSE CHARGES**

I refer to your request of 6 June 2021 to the Department of Health (the department) seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

I request under FOI Documents prepared for meeting with Pfizer in July 2020 regarding the procurement of the Pfizer Vaccine for Australia.

This includes:

- documents prepared for representatives of the Australian government regarding scope of negotiations/procurement authority and limits to authority to make an agreement between the Australian government and Pfizer.
- any notes taken at the meeting of 10 July 2020 between Australian government and Pfizer (including the names of Australian Government attendees) - any reports on the outcome of that meeting of 10 July 2020 between Australian government and Pfizer - any notes taken at any meeting during the period 1 June 2020 - 30 July 2020 between Australian government and Pfizer
- any reports on the outcome of any meeting during the period 1 June 2020 - 30 July 2020 between Australian government and Pfizer.

On 20 July 2021, consistent with paragraph 29(1)(e) of the FOI Act and clause 12 of the *Freedom of Information (Charges) Regulations 2019* (the FOI Charges Regulations), the department notified you of your liability to pay a charge in relation to your FOI request. The preliminary assessment provided to you was for the following amounts:

Search and retrieval time (6 hours @ \$15 per hour)	\$90
Decision making time (4 hours @ \$20 per hour)	\$80
(Reduction of Decision making time by up to 5 hours or \$100)	-\$80
TOTAL	\$90
DEPOSIT (\$20 or 25% of total, whichever is greater)	\$20

On 27 July 2021, you wrote to the department requesting a waiver of the charges imposed by the department in relation to your FOI request, and provided the following contentions in support of your request:

Thank you for your predictable approach to responding to this FOI request. Please consider this my response satisfying s 29(f)(ii) that the charges should be waived on the basis of public interest.

In support of my request for waiver I refer you to any news outlet which will highlight the nature of the public interest in this request.

I await your decision on the imposition of charges and the recommencement of the processing of the FOI request.

On 27 July 2021, the department notified you that an internal review of your request for waiver of the charges would be undertaken and you would be notified of a decision within 30 days.

Internal Review Decision

I am authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests, including requests for internal review of charges decisions.

I am writing to notify you of my decision in response to your request for internal review of the department's decisions to impose charges in relation to each of the relevant FOI requests.

I have decided not to waive or reduce the charge in relation to your FOI request.

Reasons for my decision

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

- the scope of your request
- the content of the documents identified as falling within scope of your request
- your contention of 27 July 2021 that the charge should be waived
- advice from departmental officers with responsibility for matters relating to the documents sought
- the relevant provisions of the FOI Act and the FOI Charges Regulations, and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).

My findings of fact and reasons for deciding not to waive or reduce the charge are set out below.

Subsection 29(5) of the FOI Act does not limit the matters an agency may consider in making a decision on whether to impose or waive a charge. However, subsection 29(5) of the FOI Act requires a decision maker, in deciding whether or not to waive or reduce the charges, to take into account:

- whether paying the charge would cause financial hardship to the applicant, and
- whether giving access to the documents is in the general public interest or in the interest of a substantial section of the public.

Financial hardship

As you have not raised the issue of financial hardship or provided evidence to indicate that payment of the charge would cause you financial hardship, I have no basis on which to find that the charge should be waived or reduced on this ground.

Public Interest

You have stated 'that the charges should be waived on the basis of public interest' and referred to 'any news outlet which will highlight the nature of the public interest in this request'.

There is a difference between something that is 'in the public interest' and something that is 'of interest to' the public or some members of the public. For example, many issues that attract media attention and community interest have no bearing in the good order and functioning of the community and government affairs or the wellbeing of citizens.

Paragraphs 4.105 to 4.107 of the FOI Guidelines provide as follows:

The FOI Act requires an agency or minister to consider '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' (s 29(5)(b)). This test is different to, and can be distinguished from, public interest considerations that may arise under other provisions of the FOI Act.

Specifically, the public interest in s 29(5)(b) is different to the public interest test in s 11A(5) that applies to conditionally exempt documents. Nor will s 29(5)(b) be satisfied only by a contention that it is in the public interest for an individual with a special interest in a document to be granted access to it, or that an underlying premise of the FOI Act is that transparency is in the public interest.

An applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that will benefit from this disclosure (s 29(1)(f)(ii)). This may require consideration of both 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 public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents.

In addition, paragraph 4.97 of the FOI Guidelines provides as follows:

Moreover, an agency or minister should always consider whether disclosure of a document will advance the objects of the FOI Act, even if the applicant has not expressly framed a submission on that basis. The objects of the FOI Act include promoting better informed decision making, and increasing scrutiny, discussion, comment and review of the Government's activities (s 3).

According to paragraph 4.5 of the FOI Guidelines, the amount of any charge imposed should be:

- determined bearing the objects of the FOI Act in mind
- reasonable, taking into account all relevant factors, and

- proportionate to the cost of making a decision and providing access.

In addition, paragraph 4.6 of the FOI Guidelines provides that a charge should fairly reflect the work involved in providing access to documents.

The estimated amount of work estimated for the processing of your FOI request is 10 hours. However, you have only been charged for 6 hours of processing time as the department has reduced the charges payable for Decision making by 4 hours.

Having regard to the departmental resources required to process your request and the minimal charges imposed on you to contribute to those costs, I am not satisfied that the charges imposed in relation to your request should be waived or reduced.

Finally, I note that your FOI request seeks access to documents regarding the procurement of the COVID-19 vaccine from Pfizer. The department acknowledges that some members of the community may be interested in the details of the procurement process. Some of the documents or parts of documents you have requested are likely to be exempt under section 47 of the FOI Act (documents disclosing trade secrets or commercially valuable information) and/or conditionally exempt under section 47E (certain operations of agencies). Other information, such as the names of Australian Government attendees at meetings may be conditionally exempt under section 47F of the FOI Act (personal privacy).

Furthermore, the Australian Government has published relevant information about the procurement of the COVID-19 vaccines, including the following:

- Information on the Department's website about Australia's 5 separate agreements for the supply of COVID-19 vaccines:
<https://www.health.gov.au/initiatives-and-programs/covid-19-vaccines/covid-19-vaccine-government-response/australias-vaccine-agreements>
- Ministerial statements regarding the contracts for COVID-19 vaccines:
<https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/contracts-signed-for-rollout-of-covid-19-vaccine>
<https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/australia-secures-moderna-vaccines>
- Media releases updating the community on deals to secure COVID-19 vaccines:
<https://www.pm.gov.au/media/new-deal-secures-potential-covid-19-vaccine-every-australian>
- COVID-19 vaccine weekly safety reports issued by the Therapeutic Goods Administration: <https://www.tga.gov.au/periodic/covid-19-vaccine-weekly-safety-report-29-07-2021> (latest report dated 29 July 2021)

For these reasons I am not satisfied that the charge of \$90 should be waived or reduced on public interest grounds.

Please 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 any relevant documents should ultimately be disclosed.

Other considerations

As noted above, subsection 29(5) of the FOI Act does not limit the matters an agency may consider in making a decision on whether to impose or waive a charge.

I have no additional information available to me on which to base a decision to reduce or waive the charges in relation to this request.

Effect of my decision

As a consequence of this decision, you are liable to pay the charges imposed on 20 July 2021 in relation to your FOI request if you wish to proceed.

I have also decided, consistent with paragraph 29(1)(e) of the FOI Act and clause 12 of the FOI Charges Regulations, that you are required to pay a deposit of \$20 in relation to your FOI request. Payment of the deposit will be taken as your authority to proceed with the processing of the request and your agreement to pay the balance of the charge in full.

Upon payment of the deposit you will become liable for the full amount of the charge and you will not receive access to any documents a decision maker may decide to release to you until the outstanding balance is paid.

The department can accept credit card, money order or cheque payments.

If you choose to pay by cheque (personal or bank) or money order it should be sent to:

FOI Unit (MDP 516)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

If you wish to pay by credit card, please contact the department's FOI Unit on (02) 6289 1666 to be further advised.

FOI review rights

If you are dissatisfied with my decision, under section 54L of the FOI Act, you may apply to the Office of the Australian Information Commissioner (OAIC) for review of my decision by the Information Commissioner (IC).

In accordance with subsection 54S(1) of the FOI Act, an IC review application in relation to a decision covered by subsection 54L(2) (access refusal decisions) must be made in writing within 60 days after the day you are notified of this internal review decision.

More information about IC review is available on the OAIC website at:

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

The OAIC can be contacted by:

Email: enquiries@oaic.gov.au

Phone: 1300 363 992

Complaints

If you are dissatisfied with actions taken by the department, you may also make a complaint.

Complaint to the department

Complaints to the department are covered by the department's privacy policy. A form for lodging a complaint directly to the department is available on the department's website:

<https://www.health.gov.au/about-us/contact-us/complaints>

Complaint to the IC

Information about making a complaint to the IC about action taken by the department is available on the OAIC website:

<https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>

Relevant provisions under the FOI Act

The FOI Act and the FOI Charges Regulations, including the provisions referred to in this letter, can be accessed from the Federal Register of Legislation website:

<https://www.legislation.gov.au/Details/C2021C00219>

<https://www.legislation.gov.au/Details/F2019L00348>

Yours sincerely



Stephen Bouwhuis

General Counsel

Legal Advice and Legislation

17 August 2021