



FOI Reference: LEX4275

File No: 21/25573

17 December 2021

Edward Foucault

By email: foi+request-7705-dadb9304@righttoknow.org.au

Dear Mr Foucault

Re. Freedom of Information Request – contention of assessment of charges

The purpose of this letter is to give you a decision about charges in respect to your current request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

I regret the delay in responding to your correspondence to the department on 27 September 2021.

I have decided not to reduce or waive the charge of **\$496.18** payable in respect of your FOI request.

Request

On 19 August 2021, you requested:

“documents relating to the consideration of and provision of any Australian Government aid, grants, donations or financial, personnel, and asset support of development initiatives within the country of Burkina Faso from 2015 until the date of this request, including both approved and declined submissions and details of how the decision to approve / decline was reached.”

Searches for documents were undertaken by the Africa Branch and the Humanitarian, Refugee & NGOs Branch. Searches were also undertaken by the Australian High Commission in Accra, Ghana (accredited to Burkina Faso).

On the 23 September 2021, Tom Beamish, Director of the FOI and Privacy Law Section, made a decision that a charge was payable for access to documents you were seeking. Having reference to the charges that can be imposed, set out in Part 1 of Schedule 1 of the *Freedom of Information (Charges) Regulations 2019* (the Charges Regulations), Mr Beamish assessed that a charge of \$496.18 was payable for access to the documents sought.

On 27 September 2021, you contacted the department stating the following:

“I would like to contend the quotation of costs for the charges levied for this request.”

I am at a loss as to how the particular cost has been calculated. The amount of \$496.18 seems a very abstruse amount to quote given there is not even the slightest indication in your communication as to how many documents may be deemed relevant to this request.

Surely even the most cursory search of your database by using the search terms "Burkina Faso", "Government aid" and "2015 - 2021" would have given an indication which you could have provided. We are talking about documents that will have arisen in the current electronic age - not searching for documents from the files of a Government entity back in the times of the Whitlam Government.

If some broad indication cannot be gained by an electronic search of keywords then the Departments' information depository system is dysfunctional.

Please review the amount quoted for this request and justify it based on some factual data that is relevant to the calculation of the true costs of this request, rather than try to deflect the request by imposing a financial barrier."

Reasons for decision

I am authorised in accordance with the provisions of section 23(1) of the FOI Act to make a decision on your request. I was not involved in the original decision that a charge was payable.

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

- the FOI Act
- the Charges Regulations; and
- Guidelines issued by the Australian Information Commissioner under section 93 of the FOI Act (the FOI Guidelines).

Section 29 of the FOI Act provides the process for charges to be imposed in respect of FOI requests. First, a preliminary assessment of the charge is made, and the applicant is informed of the basis on which the assessment is made. The applicant may then contend the charge has been wrongly assessed, or should be reduced or not imposed (section 29(1)(f)(ii) of the FOI Act). I note you have contended that the charge has been wrongly assessed.

According to the FOI Guidelines, where the applicant contends that the charge has been wrongly assessed, the central issue to be considered is whether relevant provisions of the FOI Act and the Charges Regulations have been correctly understood and applied (FOI Guidelines, [4.95]).

The preliminary assessment made by the department was calculated as follows:

Description and rate	Estimate of time	Total
Search and retrieval time (\$15 per hour)	27.5 hours	\$412.50
Decision-making time (\$20 per hour)	6 hours	\$83.68 (after deduction of first 5 hours free of charge)
Total		\$496.18

I have examined material returned from the High Commission in Accra, Africa Branch and the Humanitarian, Refugee & NGOs Branch. Your request found approximately 120 pages of material requiring manual examination to determine whether or not they are suitable for release.

Based on reports provided from these Branches and the High Commission, I am satisfied that 27.5 hours was a reasonable estimate of the time taken to perform document searches.

I am also satisfied that 6 hours is a reasonable estimate of the time it will take to process a decision on your request for access to documents, given the estimate of the volume of the documents and the consultation which will be required to make a decision on access.

Based on this information, and the schedule of charges provided in Part 1 of Schedule 1 of the Charges Regulations, I assess that the charge due in this matter is \$496.18.

Please note that at this stage in the FOI process, no decision has been made on whether the information you seek will be released or exempted under the provisions of the FOI Act. My decision relates only to processing charges.

This is a reviewable decision. Information about seeking a review is attached.

Next steps

Now I have written to you with my decision on charges, you have 30 days within which to:

- pay the charges or a deposit of **\$83.68**;
- seek review of my decision (as per the enclosed information); or
- withdraw your FOI request.

If we do not receive a response from you as outlined above within 30 days of this letter, your request will be deemed to have been withdrawn, in accordance with section 29 of the FOI Act.

Contact

If you have any questions about this decision, please contact foi@dfat.gov.au.

Yours sincerely



Tom Beamish
Director
Freedom of Information and Privacy Law Section

Your review rights

Internal review

You may apply for internal review of the decision (section 54 of the FOI Act). The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary.

The internal review will be carried out by another officer within 30 days.

Any request for internal review should be directed via email to foi@dfat.gov.au or addressed to:

Freedom of Information and Privacy Law Section
Department of Foreign Affairs and Trade
R G Casey Building
John McEwen Crescent
Barton ACT 0221
Australia

Australian Information Commissioner

You may apply within 60 days of the date of this letter to the Australian Information Commissioner to review my decision (section 54L of the FOI Act).

You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (section 70 of the FOI Act). Making such a complaint about the way the Department has handled your FOI request is a separate process to seeking review of my decision.

Further information on applying for an Australian Information Commissioner review is available at: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>

Further information about how to make a complaint is available at: <http://www.oaic.gov.au/freedom-of-information/foi-complaints>