



**Australian Government**

**Department of Health**

Department Reference: FOI 3030

Mr John Snow

via email: [foi+request-7857-921a7a58@righttoknow.org.au](mailto:foi+request-7857-921a7a58@righttoknow.org.au)

Dear Mr Snow

#### **NOTICE OF DECISION: LIABILITY TO PAY A CHARGE**

Thank you for your request of 13 September 2021 to the Department of Health (department), seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

I would like to request the Minutes of all Environmental Health Standing Committee (enHealth) meetings from 2017 to present.

Additionally I would like to request access to any papers presented to enHealth during this time on the safety of 5G or electromagnetic energy more broadly.

On 11 October 2021, the department wrote to you advising the scope of your request as currently framed would require a substantial and unreasonable diversion of resources to process. On the same day, you agreed to limit the scope of your request to the following:

Instead of the minutes, can I request the agendas for all meeting as I assume no third-party consultation will be required for these.

The department responded to your clarified scope and advised that third party consultation would still be required as EnHealth is a jurisdictional committee.

On 13 November 2021 you were notified the department was undertaking Third-Party Consultation.

On 15 November 2021, you were notified of your liability to pay a charge of \$562.75.

On 23 November 2021, you wrote to the department requesting an Internal Review of the charge in the following terms:

In line with your request, I contend the charges imposed on this request. According to the terms of reference of enHealth, it meets every second month and I would assume there is approximately 30 documents (agendas) that would have to be produced under this request. You are of course able to redact any names or private information as part of this request.

The original estimated charge was calculated in accordance with section 29 of the FOI Act and the *Freedom of Information (Charges) Regulations 2019*. A significant portion of the charge reflected the time it would take to complete third-party consultation on the documents.

As you have specified in your request for an Internal Review that you agree for any 'names or private information' be redacted, this has significantly reduced the number of third-parties that require consultation and therefore reduced the total charge by \$330.25.

Accordingly, you are only required to pay a charge of \$232.50 to process your FOI request.

I have also decided you are required to pay a deposit of \$50.00. Payment of a deposit is taken as your authority to proceed with processing of your request and your agreement to pay the full charge in which case you will become liable to the Commonwealth for the full cost of processing the charge.

#### Waiver or Reduction of Charge

Having decided to reduce the charge, I considered your request for waiver or reduction of the (revised) charge.

In considering whether to reduce or waive the charges, consistent with the Australian Information Commissioner's Guidelines issued pursuant to section 93A of the FOI Act (the FOI Guidelines), I have considered whether the charges imposed:

- were calculated or determined bearing the objects of the FOI Act in mind
- are reasonable, taking into account all relevant factors, and
- are proportionate to the cost of making a decision and providing access.

I have also taken into consideration paragraph 4.6 of the FOI Guidelines, which provides that:

A charge should fairly reflect the work involved in providing access to documents.

I have undertaken enquiries with both the department's FOI Unit and relevant departmental officers, and have considered the amount of work undertaken to process this request to date, including the searches completed to locate documents relevant to

both the original and revised scope of your request, and the amount of work that must still be undertaken to complete the processing of this request.

I am satisfied the revised estimate of the charge was calculated bearing the objects of the FOI Act in mind is reasonable, taking into account all relevant factors, is proportionate to the cost of making a decision and providing access, and reflects the work involved in processing your request.

In making my decision, I took into account:

- your request for documents under the FOI Act
- your email of 23 November 2021
- the number and content of the documents falling within the scope of your request
- the relevant provisions of the FOI Act
- the Commonwealth Attorney-General's Department's *Better Practice Guide: Freedom of Information Act* (AGD Guide), and
- the FOI Guidelines.

In deciding whether or not to waive or reduce the charges, I am required by subsection 29(5) of the FOI Act to take into account:

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

As 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 also explored other considerations that may be relevant to my decision.

As you have not provided any evidence to demonstrate payment of the charges would cause financial hardship, I have not considered this matter further.

As you have not submitted that the release of the information you are seeking is in the public interest, I have not considered this matter further.

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.

In *Australian Associated Press Pty Ltd and Department of Foreign Affairs and Trade (Freedom of Information)* [2018] AICmr 13, the former Information Commissioner said at [20]:

The general discretion to reduce or not impose a charge is not limited to financial hardship and public interest grounds. An FOI decision maker should also consider any other relevant factors, including whether disclosure of a document would advance the objects of the FOI Act (for example, by promoting Australia's representative democracy by contributing towards increasing scrutiny, discussion, comment and review of the Government's activities), even where an applicant has not expressly framed a submission on that basis

Paragraph 84 of the AGD Guide provides that factors affecting a decision on whether to waive or reduce charges includes:

- whether the FOI request is relatively simple or will require a lot of effort;
- whether the applicant has agreed to reduce the scope, in which case it may be reasonable to reduce the charge substantially

I have decided not to waive or reduce the revised charge of \$232.50.

### **Effect of my decision**

If you wish to proceed with this FOI request, you are required to pay a deposit of \$50. Payment of the deposit will be taken as your authority to proceed with the processing of your request and your agreement to pay the balance of the charges of \$232.50 in full. Until you pay the deposit, your request remains on hold.

When the department makes an access decision in response to your request, you will become liable for the balance of the charges. You will not receive access to any documents the decision-maker may decide to release to you until you have paid the charges in full.

If, within 30 days from the date of this notice, the department has not received payment of the deposit of \$50 or you have not sought a review of my decision, consistent with the FOI Act, the department will consider your FOI request to have been withdrawn.

### **Payment**

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 the following address:

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, you may apply for a review. Pursuant to paragraph 53A(e) of the FOI Act, a decision under section 29 relating to the imposition of a charge or the amount of a charge, such as this decision, is an access refusal decision. Such decisions are reviewable.

### Internal review

Under section 54 of the FOI Act, you may apply for internal review of my decision not to waive the charges in full.

In accordance with section 54B of the FOI Act, an application for internal review must be made in writing within 30 days after the day you are notified of this decision (or such further period as the department allows). To assist in the internal review process, please provide reasons you consider the review of my decision is necessary.

The internal review will be carried out by another officer of this department within 30 days of receipt of your application.

An application for an internal review should be addressed to:

Email: [FOI@health.gov.au](mailto:FOI@health.gov.au)  
Mail: FOI Unit (MDP 516)  
Department of Health  
GPO Box 9848  
CANBERRA ACT 2601

### Information Commissioner review

Alternatively, 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 decision (if you do not request an internal review).

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](mailto: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 here:

<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**

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

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

Privacy Act - <https://www.legislation.gov.au/Details/C2021C00139>

### **Contacts**

If you require clarification of any of the matters discussed in this letter you should contact Freedom of Information Unit on (02) 6289 1666 or at [FOI@health.gov.au](mailto:FOI@health.gov.au).

Yours sincerely



Stephen Bouwhuis  
General Counsel  
Legal Advice and Legislation Branch

7 December 2021