



Australian Government

Department of Health

Department Reference: FOI 3079 IR

Mr Steve Roddis

Via email: foi+request-7868-43035b2f@righttoknow.org.au

Dear Ms Roddis

**NOTICE OF DECISION - INTERNAL REVIEW - CHARGES
FREEDOM OF INFORMATION REQUEST 3079**

I refer to your request of 16 September 2021 to the Department of Health (the department) requesting access to the following documents under the *Freedom of Information Act 1982* (the FOI Act):

I'm requesting a copy of each National Immunisation Program Schedule[1], Childhood Vaccination Schedule, or equivalently named documents that exist historically.

To clarify the website [1] contains documents for 2021, I'm requesting similar documents that exist but for all other years.

I've managed to find a document on school based vaccinations [2] however this does not cover vaccinates given to babies, at doctors and outside school.

No personal information is requested.

I realise some documents may not exist anymore, that is okay.

[1] <https://www.health.gov.au/health-topics/immunisation/immunisation-throughout-life/national-immunisation-program-schedule>

[2] [https://www1.health.gov.au/internet/main/publishing.nsf/Content/cda-cdi3702-pdf-cnt.htm/\\$FILE/cdi3702j.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/cda-cdi3702-pdf-cnt.htm/$FILE/cdi3702j.pdf)

On 10 November 2021, the department notified you of your liability to pay a charge of \$90 in relation to the processing of your FOI request.

On the same day, you wrote to the department seeking clarification regarding the contents of the email imposing the charge and requesting an internal review of the decision to impose the charge.

Response to your queries

Who is the Director?

You have asked what the term “the Director” in the email imposing the charge refers to, and whether the Director has authority to make decisions.

The Director of the department’s Freedom of Information (FOI) Unit is an Executive Level officer. The Secretary of the department has authorised the Director, under subsection 23(1) of the FOI Act, to make certain decisions under the FOI Act, including decisions relating to the imposition of charges.

Additional information about authorised decision makers for the purposes of the FOI Act is available on the website of the Office of the Australian Information Commissioner (OAIC) here:

<https://www.oaic.gov.au/freedom-of-information/guidance-and-advice/making-a-decision-on-an-foi-access-request>

How was the charge calculated?

You have also requested information about how the charge was calculated.

The charge was calculated in accordance with section 29 of the FOI Act and the *Freedom of Information (Charges) Regulations 2019* (the FOI Charges Regulations) according to the amount of time departmental officers spent searching the department’s various electronic databases and hard copy holdings, reviewing the content of each document identified as relevant to determine whether those documents contain exempt and/or irrelevant material, and preparing the decision letter.

Additional information about how charges are calculated is available on the OAIC website here:

<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-4-charges-for-providing-access>

Internal Review Decision

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

I am writing to notify you of my decision in response to your request for internal review.

In making my decision not to waive or reduce the charge of \$90, I had regard to:

- the scope of your request

- the content of the documents identified as falling within scope of your request
- the charge notice
- the content of your email requesting internal review of imposition of the charge
- 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 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.

Public Interest

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.

Paragraph 4.6 of the FOI Guidelines also provides that a charge should fairly reflect the work involved in providing access to documents.

Based on the number of documents identified as relevant to your request and the time it took departmental officers to locate and review those documents and prepare the decision letter, I am satisfied that the charge imposed is consistent with paragraphs 4.5 and 4.6 of the FOI Guidelines.

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).

Your FOI request seeks access to Immunisation and Vaccination Schedules, and you provided the following contentions in support of your request for a waiver of the charge:

I submit there is an overriding public interest in releasing proactive or otherwise the "National Immunisation Program Schedule, or equivalently named documents" and that all costs should be waived

The department acknowledges that some members of the community may be interested in these Schedules, which is why the department has ensured the 2021 Schedules are publicly available on the internet. However, it is not clear to the department what public benefit would flow from the release of the documents you seek. I am not satisfied that there would be a benefit from the release of the documents you seek flowing to the public in general or a substantial section of the public

Paragraph 4.99 of the FOI Guidelines lists some of the matters that may weigh against waiving or reducing a charge which relevantly including where "the documents are primarily of interest only to the applicant and are not of general public interest or of interest to a substantial section of the public".

In *MacTiernan and Secretary, Department of Infrastructure and Regional Development (Freedom of information)* [2015] AATA 584 at paragraph 30, the Administrative Appeals Tribunal, in considering whether to waive a charge on public interest grounds, compared the number of documents identified as within the scope of the request and the cost of processing the request against the subject matter of the request.

Having regard to the breadth of your FOI request, the cost of processing the request and the subject matter of your request and the relatively small amount of the charge

imposed, I am satisfied that the charge of \$90 is reasonable and should not be waived or reduced.

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 the documents should ultimately be disclosed.

I am therefore satisfied that the charge of \$90 should not be waived nor reduced on public interest grounds.

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 find that the charge should not be reduced on this ground.

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.

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.

In *Tennant and Australian Broadcasting Corporation* [2014] AATA 452, the Administrative Appeals Tribunal said at [14] and [15]:

... Other matters may also be considered. One such matter is the intention discernible in the imposition of the charge that the amount should reflect the time and effort involved in accessing the requested documents. That factor takes into account the time spent searching for or retrieving the document, in examining the document and making any deletions, in making a document available in a usable form, in production of a written transcript, and in arranging for the inspection, viewing, or listening to a recording of a stored image, or in copying and delivery of the relevant document.

In other words, there is an intention that a user pays principle should apply. That is reflected in the Guidelines which state that there can be a charge for the 'actual

costs' incurred by an agency. The Act also provides that if a charge is imposed, no access is granted until the charge is paid.

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 a charge of \$90.

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 in the amount of \$20. 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 charge in full.

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 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/>

The FOI Act and the FOI Charges Regulations

The FOI Act, 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>

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

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

Contacts

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

Yours sincerely

Stephen Bouwhuis
General Counsel
Legal Advice and Legislation Branch

November 2021