



## Australian Government

### Department of Finance

Reference: FOI14/164  
Contact: FOI Team  
Telephone: (02) 6215 1783  
e-mail: [foi@finance.gov.au](mailto:foi@finance.gov.au)

Red  
Right to Know

via email: [foi+request-820-68563b09@righttoknow.org.au](mailto:foi+request-820-68563b09@righttoknow.org.au);

Red,

### Freedom of Information Request – FOI14/164

Thank you for your email to the Department of Finance (Finance) in which you sought access to the following under the *Freedom of Information Act 1982* (FOI Act).

*Copies of the Delegation Schedules for these items of legislation –*

- *Financial Management and Accountability Act 1997*
- *Future Fund Act 2006*
- *Governance of Australian Government Superannuation Schemes Act 2011*

### Charges Imposed

On 24 December 2014, you were notified of the amount of charges you are liable to pay for the processing of your request. The initial assessment of that charge was \$574.00.

### Contention of the charges

In an email dated 30 December 2014, you outlined your contention of the initial estimate of charges. You sought a waiver of the charges and made the following submissions:

*\$574 to provide me with three delegation schedules is completely unjustified. Are you seriously suggesting that it will take over 3 hours to retrieve these documents and over 20 hours to determine whether to release them? I find this hard to believe and don't actually find your estimations reasonable. I would like you to consider withdrawing these charges and providing these schedules for no charge. Similar FOI requests I have made to Customs and DVA were responded to well within 30 days and in neither case was a charge applied. I doubt that your delegation instruments are any more difficult to locate and assess than their's.*

In accordance with subsections 29(8) and 29(9) of the FOI Act, this letter is a written notice of the reasons for my decision to reject your contention in full and an outline of your rights with respect to review of this decision.

## **Decision on waiver or reduction of charges**

I confirm that I am an authorised officer for the purpose of subsection 23(1) of the FOI Act.

I have considered your request on its merits. In accordance with section 29 of the FOI Act, I have decided not to waive the charges.

## **Consideration of contention**

In deciding whether to exercise the broad discretion in subsection 29(4), to reduce or not impose a charge, I may consider any relevant matter. However, subsection 29(5) provides that I must consider whether giving access to the documents in question is in the general public interest, or in the interest of a substantial section of the public; and whether the charge would cause financial hardship.

In considering whether charges should be waived, I have had regard to the following:

- the terms of your FOI request;
- your submissions;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act, including the aims and objectives; and
- FOI Guidelines and IC Review decisions, as issued by the Office of the Australian Information Commissioner (OAIC).

## **Legislation**

Subsection 29(5) of the FOI Act provides:

*Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:*

- (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and*
- (b) 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.*

In addition, any other relevant matter may be considered, including those matters set out in your submissions.

### *Financial hardship*

As you have not contended that payment of the charge would cause financial hardship, I have not considered this factor further.

### *Public Interest*

Although you have not identified or specified the ‘general public interest’ or the ‘substantial section of the public’ that would benefit from disclosure, I am obliged to, and have considered this factor.

The threshold requirement is to identify the benefit that would flow from disclosure of the documents to the public or a substantial section of the public. The test is different to the question of whether it is in the public interest for access to be granted to the documents as set out in the conditional exemptions (see further discussion below).

Section 29(5)(b) requires me to consider 'whether the giving of access to the documents in question is in the general public interest or in the interest of a substantial section of the public'.

I do not consider the documents that fall within the scope of the request to meet this test. While I acknowledge that the documents may in some way add to the information about delegation schedules within the public arena, it is a reasonable expectation that there would be limited benefit that would flow from release of the documents due to the content and context of the documents.

As such, I consider that release of the documents would not add to public debate. I do not consider any of the following examples identified at paragraph 4.58 of the OAIC Guidelines support your request for waiver.

- *The document relates to a matter of public debate, or a policy issue under discussion within an agency, and disclosure of the document would assist public comment on or participation in the debate or discussion;*
- *The document relates to an agency decision that has been a topic of public interest or discussion, and disclosure of the document would better inform the public as to why or how the decision was made, including highlighting any problems or flaws that occurred in the decision-making process;*
- *The document would add to the public record on an important and recurring aspect of agency decision making;*
- *The document is to be used by a researcher in research that is to be published widely or that complements research being undertaken in an agency or elsewhere in the research community;*
- *The document is to be used by a community or non-profit organisation in preparing a submission to a parliamentary or government inquiry, for example, on a law reform, social justice, civil liberties, financial regulation or environmental or heritage protection issue;*
- *The document is to be used by a member of Parliament in parliamentary or public debate on an issue of public interest or general interest in the member's electorate;*
- *The document is to be used by a journalist in preparing a story for publication that is likely to be of general public interest.*

The FOI Guidelines indicate it is open to an agency or minister to impose a charge even though a public interest purpose for disclosure has been established.

I am not persuaded that a case for waiver, on the grounds of public interest, has been demonstrated.

### **Confirmation of Charges**

In your email dated 30 December 2014, you submitted that:

*\$574 to provide me with three delegation schedules is completely unjustified. Are you seriously suggesting that it will take over 3 hours to retrieve these documents and over 20 hours to determine whether to release them? I find this hard to believe and don't actually find your estimations reasonable*

It appears from your email that you are under the impression that the request would require minimal work. I have reviewed the estimate of charges. I can confirm that the department has identified a large amount of material relating to the subject matter of your request (over 200 pages) and that \$574.00 is a reasonable estimation of the charges for processing your request.

You also submitted that:

*Similar FOI requests I have made to Customs and DVA were responded to well within 30 days and in neither case was a charge applied. I doubt that your delegation instruments are any more difficult to locate and assess than their's.*

I cannot comment on other Commonwealth agencies' document and FOI processes. Accordingly, I affirm the original assessment of charges.

### **The public interest test for conditional exemptions**

The public interest test for waiver under subsection 29(5) of the FOI Act differs from the public interest test in section 11B of the FOI Act. The fact that giving access would be in the public interest for the purposes of reducing or imposing a charge under section 29 does not mean that giving access to those same, conditionally exempt documents, cannot be, on balance, contrary to the public interest.

No decision on access has been made at this stage.

### **Liability to pay a charge**

The affirmed assessment of the charge to process this request is as follows:

<b>Task</b>	<b>Rate</b>	<b>Units</b>	<b>Charge</b>
Search & retrieval	\$15 per hour	3.32 hours	\$ 49.80
Decision-making	\$20 per hour	29.81 hours	\$ 596.20
<i>less first 5 hours free</i>		5 hours	\$ -100.00
Photocopies	0.10 per page	280 pages	\$ 28.00
<b>TOTAL</b>			<b>\$ 574.00</b>

In accordance with the *Freedom of Information (Charges) Regulations 1982* (Charges Regulations), this estimate has included five hours of decision making time free of charge.

You can agree to pay the charge. If you agree, processing of your request will resume as soon as the department receives a payment, either in full or a deposit.

Payment in full is \$574.00. Payment in full entitles you to receive a decision in relation to your request, a schedule which lists the documents relevant to your request, and any documents released.

Regulation 12 of the Charges Regulations provides that the department can receive a deposit. The required deposit for this request is \$143.50. Payment of a deposit entitles you to receive a decision in relation to your request and a schedule which lists the documents relevant to your request. Relevant documents would only be released on payment of the balance of charges. Regulation 14 provides a deposit paid by an applicant is not refundable unless the

Department decides to waive the charge or fails to make a decision on the applicant's FOI request within the statutory time limit, including any extension.

Your cheque/money order should be made payable to the Collector of Public Monies and addressed to:

FOI Coordinator  
Legal Services Branch  
Department of Finance  
John Gorton Building  
King Edward Terrace  
PARKES ACT 2600

If you wish to pay by credit card, you should forward a letter which sets out the credit card details and authorises the department to charge that amount to the card. Please note that the department only accepts Mastercard and Visa.

Consistent with paragraph 29(1)(f) of the FOI Act, within 30 days of the date of this notice, you need to either:

- agree to pay the charge indicated above and forward the deposit; or
- withdraw your request; or
- exercise your review rights.

If you fail to notify this department in a manner described above within 30 days of the date on this notice, it will be taken that you have withdrawn your request.

Please note that, should you forward a deposit in accordance with section 29 of the FOI Act, you will then accept liability for settlement of the debt with the department upon completion of processing the FOI request. The outstanding charge amount is a debt created in favour of the Commonwealth and therefore, the department is obliged to pursue recovery of the debt in accordance with the *Public Governance, Performance and Accountability Act 2013*.

### **Opportunity to revise request**

Paragraph 4.62 of the OAIC guidelines states:

*It may also be appropriate to reduce or waive a charge if the applicant responds to a charge notice by revising the terms of their request so that it requires less work to process.*

There is an opportunity to revise your request which may reduce the charges. It may be that there are specific elements within the request subject-matter that you are particularly interested in that could be isolated with a view to narrowing the terms of the request.

Given the broad scope of your request, all documents relevant to delegations under the specified legislation have been included in determining the charges. You may consider narrowing the scope of the request, for example, to the provisions in the legislation that you are interested in and excluding other documentation.

If you decide to revise the scope of your request, please advise the FOI Team, in writing, via [foi@finance.gov.au](mailto:foi@finance.gov.au). We will then issue you with a new FOI charges notice.

## **Review and Appeal Rights**

You are entitled to request an internal review of my decision to not waive charges. Your appeal rights are set out in Attachment B as prescribed by 29(9) of the FOI Act.

## **Processing Time**

In relation to the preliminary assessment of charges, in accordance with section 31 of the FOI Act, the time period for processing your request is suspended from the date of this notice and resumes on either day you pay the deposit or the day on which Finance makes a decision not to impose a charge. However, the actual processing time may also be affected by third party consultation.

## **Extension of Time - Third Party Consultation**

As documents falling within the scope of your request may involve the unreasonable disclosure of the business/personal information of a third party, the decision maker is obliged under sections 27 and 27A of the FOI Act to consult with the third parties and give them an opportunity to make submissions regarding possible disclosure of the documents. The decision maker must take their views into account in determining whether a document is an exempt document.

To enable time for the consultation process, subsection 15(6) of the FOI Act extends the period in which to respond to your request by an additional 30 days. You will be notified of the due date once you have advised the Department in relation to the charges.

## **Publication**

The FOI Act requires Commonwealth agencies to publish:

- information in documents to which the agency routinely gives access in response to FOI requests except where that information is exempt under the FOI Act; and
- information in documents released under the FOI Act.

Subject to certain exceptions, any documents provided to you under the FOI Act will be published on Finance's FOI Disclosure Log ([www.finance.gov.au](http://www.finance.gov.au)) as soon as possible. Finance's policy is to publish the documents within one working day after they are released to you.

## **Policy to exclude junior departmental officer contact details**

Finance has adopted a policy to generally exclude the names and contact details (telephone number and email address) of junior staff (non-SES officers) from any documents released under FOI. Finance's preference is to reach agreement with FOI applicants to exclude junior officers' names and direct contact details (telephone and email address) from the scope of the request.

Where there is no objection, the names and contact details of junior officers are redacted under section 22 of the FOI Act, on the basis that these details are irrelevant to the request. If an objection is raised then consideration would be given to the disclosure of names and contact details in light of the relevant provisions of the FOI Act. Consultation with individual junior officers may need to be undertaken in such circumstances.

Please contact the FOI Team on the above contact details if you wish to discuss your request.

Regards,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a long, sweeping horizontal line that extends to the right.

Charee O'Riley  
Acting Director  
Enterprise Management Office  
Department of Finance

22 January 2015

**Applicant Submissions**

What an absolute joke! \$574 to provide me with three delegation schedules is completely unjustified. Are you seriously suggesting that it will take over 3 hours to retrieve these documents and over 20 hours to determine whether to release them? I find this hard to believe and don't actually find your estimations reasonable. I would like you to consider withdrawing these charges and providing these schedules for no charge. Similar FOI requests I have made to Customs and DVA were responded to well within 30 days and in neither case was a charge applied. I doubt that your delegation instruments are any more difficult to locate and assess than their's.



**Australian Government**  
**Department of Finance**

## **Freedom of Information – Your Review Rights**

If you disagree with the decision made by the Department of Finance (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

### **Internal Review**

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

### **How to apply for internal review**

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why.

You can lodge your application in writing through one of the contact details provided at the end of this document.

### **Review by the Australian Information Commissioner (IC)**

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

### ***Do I have to go through Finance's internal review process first?***

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

### ***Do I have to pay?***

No. Review by the IC is currently free.

### ***How do I apply?***

You must apply for IC review in writing and you can lodge your application in one of the following ways:



**Australian Government**  
**Department of Finance**

**Post:** Office of the Australian Information  
Commissioner  
GPO Box 2999  
CANBERRA ACT 2601  
**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
**Fax:** 02 9284 9666  
**In person:** Level 3  
175 Pitt Street  
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website ([www.oaic.gov.au](http://www.oaic.gov.au)). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

***Making a complaint***

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint](#).

***When can I go to the Administrative Appeals Tribunal (AAT)?***

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is \$816 (from 1 July 2012), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

**Investigation by the Ombudsman**

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue

complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

**Post:** Commonwealth Ombudsman  
PO Box 442  
CANBERRA ACT 2601  
**Phone:** 02 6276 0111  
1300 362 072

**Finance FOI contact details**

FOI Coordinator  
Legal Services Branch  
Department of Finance  
John Gorton Building  
King Edward Terrace  
PARKES ACT 2600  
**Phone:** 02 6215 1783  
**Email:** [foi@finance.gov.au](mailto:foi@finance.gov.au)  
**Website:** [www.finance.gov.au/foi/foi.html](http://www.finance.gov.au/foi/foi.html)