



Australian Government
Department of Finance

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

Red
Right to Know

via email: foi+request-820-68563b09@righttoknow.org.au;

Dear Red

Freedom of Information Internal Review Request – FOI14/164

On 8 December 2014 in an email to the Department of the Finance (Finance) you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

... 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*

Original Charges Decision

On 24 December 2014, Finance notified you that you are liable to pay a charge for processing your request and that the preliminary assessment of that charge is \$574.00.

On 30 December 2014, via email to Finance, you contended the charges and requested Finance waive the charges on the grounds of public interest.

On 23 January 2015, Finance notified you of the decision not to waive the charges and affirm the preliminary assessment of the applicable charges (\$574.00).

Internal Review Request

On 23 January 2015, via email to Finance, you sought an internal review of the original charges decision.

The purpose of this letter is to provide you with notice of my internal review decision under the FOI Act.

Internal Review Decision

I am authorised by the Secretary under subsection 23(1) of the FOI Act to grant or deny access to documents under the FOI Act.

I have decided to:

- a) affirm the original decision not to waive the charges; and
- b) reduce the charges to \$469.68.

Submissions

You have provided the following submissions (my numbering) in support of your internal review request:

- a) *I have been advised that in order to process my request for three delegation schedules the department deems it appropriate to charge me \$574. Apparently this charge does not include 5 hours of free processing time.*
- b) *I am unconvinced that printing off three schedules and then reviewing them in order to make a decision would even take 5 hours; which supposedly are free. Where does the necessity for paying an additional \$574 come into it? You have not actually explained how this figure was arrived at.*
- c) *The FOI Act was reformed in 2010. These reforms placed new pro-disclosure requirements on agencies and ministers. What a shame that your department is not acting in the spirit of the legislation! Pro-disclosure does not mean pricing FOI requests out of reach of ordinary citizens.*
- d) *Section 3(4) of the Act states: The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.*
- e) *The lowest reasonable cost is FREE.*

Reasons for Decision

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;
- the submissions set out in your email of 23 January 2015;
- the content of the documents that fall within the scope of that request;
- the relevant provisions of the FOI Act, including the aims and objectives;
- FOI Guidelines and IC Review decisions, as issued by the Australian Information Commissioner.

Estimate of charge

I have reviewed the preliminary assessment of charges made by the original decision maker. I consider that the preliminary assessment did not taken into account that the identified documents contained 50 pages of operational material. I consider that these pages should not attract a charge. Accordingly, I have decided to reduce the charges to \$469.68.

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.*

Financial hardship

As you have not submitted that you are contending the charges on the basis of financial hardship, I have not considered this issue further.

Public Interest

I consider that your submissions at (c) to (e) above pertain to a submission to contend the charges on the grounds of public interest.

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).

A non-exhaustive list of examples of what may constitute ‘public interest’ for the purposes of paragraph 29(5)(b) of the FOI Act is set out at paragraph 4.58 of the FOI Guidelines. In my view none of the listed examples are applicable.

I acknowledge that the documents may in some way add to the information about delegation schedules already within the public arena, however, I consider that 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.

In my view, part of the threshold requirement for the public interest test under Subsection 29(5), identification of a substantial section of the public whose interest the release of the documents may serve, is not satisfied in respect of the documents captured by your request.

I have considered 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)) and I do not consider the documents in the request meet the test. While I acknowledge that the documents may be of interest to you and may contribute in some way to the information about delegation schedules within the public arena, I do not consider them to be of interest to a substantial section of the public or of general 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.

Other contentions

Your submissions at (a) and (b) above are in regards to the charges being excessive for the work involve in processing your request.

I can confirm that my assessment of the charges is an accurate assessment of the work involved to process your request

As indicated in the original charges decision letter, given the broad scope of your request, all documents relevant to delegations under the specified legislation have been included in determining the charge. This has resulted in the identification of approximately 230 pages of relevant material, which would require search and retrieval of relevant files that hold these pages, examination of all pages to determine whether any deletions are required, consultation with an identified third party and preparing the documents for release.

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

My reduced assessment of the charge to process this request is as follows:

Task	Rate	Units	Charge
Search & retrieval	\$15 per hour	3.32 hours	\$ 49.75
Decision-making	\$20 per hour	24.85 hours	\$ 496.93
<i>less first 5 hours free</i>		5 hours	\$ -100.00
Photocopies	0.10 per page	230 pages	\$ 23.00
TOTAL			\$ 469.68

In accordance with the *Freedom of Information (Charges) Regulations 1982*, 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 Finance receives payment, in full.

Payment in full is \$469.68. 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 Finance can receive a deposit. The required deposit for this request is \$117.42. 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 Finance 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.

In accordance with 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
- exercise your review rights; or
- withdraw your request.

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.

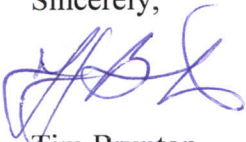
Review and Appeal Rights

You are entitled to request a review of my decision to the Office of the Australian Information Commissioner, please refer to Attachment A.

Further Assistance

If you have any questions, please contact the FOI Team on the above contact details.

Sincerely,



Tim Brunton
Assistant Secretary
Service Delivery Branch
Department of Finance

18 February 2015



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 within 60 days of the date of this letter, and be lodged in one of the following ways:

online:

<https://forms.australia.gov.au/forms/oaic/foi-review/>

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_review_s.

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
Website: www.finance.gov.au/foi/foi.html