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FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Dallas (Right to Know)

Notice of Charges Decision

Email: Dallas foi+request-8499-65167e93@righttoknow.org.au

Dear Dallas,

Freedom of information request ref. FOI/2122/020

1. I refer to your email to the National Indigenous Australians Agency (**NIAA**) on 19 March 2022 in which you requested a waiver of charges under section 29(1)(f)(ii) of the *Freedom of Information Act 1982* (the **FOI Act**).
2. I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

Charges Decision

3. I have decided under section 29(4) of the FOI Act to reduce the charge amount by 50%.
4. The amount you are liable to pay is **\$302.35**. A deposit of 10% being **\$30.24** is payable.
5. Once your FOI request has been processed, I will determine the actual charge you must pay before the documents can be provided to you. The final charge for processing your request may be different from the estimate quoted in this letter.
6. Your rights to seek review under the FOI Act or submit a complaint are set out in **Attachment A** to this notice.
7. I have set out the reasons for my decision in more detail below.

Your request for access to documents

8. On 22 February 2022, you made a request to the NIAA under the FOI Act for access to the following documents (summarised):

"I am requesting a copy of all documents, including but not limited to briefs, policy documents, timelines and strategic planning documents prepared by the NIAA since 21 December 2021 to 21 February 2022 relating to incoming government briefs, policy options for incoming Governments, including references to Red or Blue Books (or other phrases commonly related to incoming Governments).

Excluding communications:

- bodies of emails
- mobile messages
- instant messaging application messages"

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9. On 10 March 2022, you were advised that the cost associated with processing your request was \$604.70.
10. On 19 March 2022, you wrote to the NIAA to contest the estimate of charges on public interest grounds.

Reasons for decision

11. In considering your request that charges are waived, I have taken into account subsection 29(5) of the FOI Act which 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.”*

12. In addition, the *Freedom of Information (Charges) Regulations 2019* (the **Charges Regulations**) and Chapter 4 of the guidelines made by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the **FOI Guidelines**) set out the matters I must have regard to in considering a request to waive or reduce a charge.

Public interest

13. Subsection 29(5) of the FOI Act requires me to take into account whether granting access to the documents would be in the public interest or in the interest of a substantial section of the public. In considering these matters, the FOI Guidelines say it is important to identify the ‘general public interest’ or the ‘interest of a substantial section of the public’ that would benefit from disclosure.
14. You submitted that the documents sought are in the general public interest, as well as the interest of a substantial section of the public. In particular, I have taken into account your submission that:
- incoming government briefs (**IGB**) are being prepared outside the official caretaker period;
 - content of the documents relate to the official distinctions between policy platforms; and
 - general public interest, or a substantial section of the public include first nations people and wider communities.
15. In addition, I have had regard to the subject matter of the requested documents. I note the request relates to the preparation of incoming government briefs. I consider the giving of access to the requested documents may be in the general public interest, or in the interest of a substantial section of the public, because they relate to a general election of the Commonwealth government, and the matters dealt with impact vulnerable groups in the broader Australian community.
16. Although the role and utility of the IGB in the lead up to an election is well founded, the key consideration in this case is that preparation of the IGB commenced outside the official caretaker period, and that will likely be of interest to the general public or a substantial section of the public, particularly as the documents relate to the Indigenous Australians portfolio.

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Financial hardship

17. On the issue of financial hardship, paragraphs 4.101 of the FOI Guidelines relevantly states:

“Whether payment of a charge would cause financial hardship to an applicant is primarily concerned with the applicant’s financial circumstances and the amount of the estimate charges. Financial hardship means more than an applicant having to meet a charge from his or her own resources.”

18. In the decision of ‘AY’ and Australian Broadcasting Corporation, the Information Commissioner accepted the definition of financial hardship in guidelines issued by the Department of Finance for the purpose of debt waiver decisions:

“Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself or your family, or other people for whom you are responsible.”

19. You have not contended that the payment of the charge would cause you financial hardship. In the absence of any information provided by you to indicate that payment of the charge will cause you financial hardship, I have decided that, in this instance, there are no financial hardship grounds to make a decision to waive or reduce the charge.

Other matters

20. In making my decision, I have also taken into account the following factors relevant to processing your FOI request:

- The resourcing required for the NIAA to process this request, having regard to the following:
 - number of documents and pages relevant to the request;
 - hours taken to search for, and retrieve, documents relevant to the request;
 - number of third parties to be consulted in the course of making a decision about each document;
 - sensitive nature of the documents, which concern discussions and briefing when both the election outcome and the identity of the new Minister are unknown, requiring careful review and consideration;
 - the NIAA being a small executive agency that does not have staff whose role is to solely work on FOI matters; and
 - current and ongoing pandemic has constrained resourcing across the agency more broadly.

Conclusion

21. For the reasons set out above, I am satisfied that the documents are within the general public interest, or of interest to a substantial section of the public. I have also given consideration to the amount of work required to process the request.

22. Accordingly, I have decided to reduce the charges that can be imposed for the processing of your request by 50%.

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Deposit payable

23. As the reduced charge exceeds \$25, you are required to pay a deposit of **\$30.24**.
24. The deposit is not refundable except in some limited circumstances (for example, if the NIAA fails to make a decision on your request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit paid.

Timeframe for dealing with your request

25. In accordance with section 31 of the FOI Act, the period for processing your request stops from the date you receive this notice until:
- the day you pay the charge (the deposit amount or the full charge);
 - if the amount of the charge is changed following review under the FOI Act, the day you pay the revised charge (the deposit amount or the full charge); or
 - if a decision is made not to impose a charge following review under the FOI Act, the day you are notified of the decision.


Questions about this notice

26. If you have any questions about this notice or NIAA's FOI process, please contact the FOI Coordinator at:

Email: foi@niaa.gov.au

Post: Freedom of Information Coordinator
National Indigenous Australians Agency
GPO Box 2191
Canberra ACT 2601

Yours sincerely



Robert Ryan
Branch Manager
Recognition & Empowerment Branch

14 April 2022