

**CENTRAL OFFICE**

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FOI ref: 201415/11

Ken McLeod

[foi+request-871-bf6b22f6@righttoknow.org.au](mailto:foi+request-871-bf6b22f6@righttoknow.org.au)

Dear Ken,

**RE: REQUEST TO WAIVE CHARGES FOR DOCUMENTS SOUGHT UNDER THE FREEDOM  
OF INFORMATION ACT 1982**

I refer to your correspondence of 28 January 2015 in which you requested to have charges waived regarding your request to access to the following documents under the *Freedom of Information Act 1982* (FOI Act):

*“documentation pertaining to the current 8 month Census and how the participants were chosen. I also make request for documents pertaining to the geographical locations of the current 8 month Census and your Departments reasons for choosing the locations you are currently using.”*

It has been clarified with the ABS FOI contact officer that the ‘current 8 month Census’ is the ABS’ Monthly Population Survey (MPS).

On 5 February 2015, you provided evidence to support your request to have charges waived.

**Response to your request:**

I am an authorised decision maker under section 23 of the FOI Act.

Section 29(1)(f)(ii) of the FOI Act gives you the right to contend that the charge previously provided to you should be reduced or not imposed.

Compliant with section 29(5), I have taken into account the following matters in making my decision with regards to your request to waive charges:

- whether providing access to this document is in the general public interest or in the interest of a substantial section of the public; and
- whether payment of the charge would cause considerable hardship to the applicant.

In addition, I have taken into account whether the ABS provides any freely-available information of the manner sought in your request. The ABS treats documents that are publicly available (for example, documents published on a publicly accessible website) as irrelevant to a FOI request. This means that you will not be provided with publicly available documents under FOI.

### **Assessment of Public Interest test:**

*Documents pertaining to the current MPS and how the participants were chosen.*

It is likely that the documents you seek will contain specific details regarding ABS sample methodology, the nature of which comprises intellectual property of the Commonwealth. Disclosing this information would reasonably be expected to diminish the commercial value of this material.

For this reason, providing access to these documents is not in the public interest of the general public or a substantial section of the public.

I add that should the ABS proceed to process your request, it will be unlikely that the ABS would grant you access to this information, which is consistent with section 47 of the FOI Act.

*Documents pertaining to the geographical location of the current MPS.*

The ABS is dedicated to protecting the identities of the individuals who provide information to the ABS, as well as the information that they provide. By law, the ABS must not publish statistics in a manner that would be likely to enable the identification of these individuals by third parties.

Providing access to the locations of MPS respondents, by any level of locality, introduces an unacceptable risk to the ABS and its operations, as there is a likelihood that within the specified localities a MPS respondent, and the data supplied by them to the ABS, may be identified by a third party.

If this were to occur, the ABS may be in breach of a number of laws, including the *Census and Statistics Act 1905* and the *Privacy Act 1988* (including the Australian Privacy Principles). Additionally, the ABS may be required to reduce the robustness of its published statistics in order to mitigate the risk that respondents may be identifiable.

For this reason, providing access to the documents pertaining to the geographical locations of the MPS is not in the public interest.

I add that should the ABS proceed to process your request, it will be highly unlikely that the ABS would grant you access to this information, which is consistent with sections 47E, 47F and 47G of the FOI Act.

*Documents pertaining to the ABS' reasons for choosing the current locations.*

Documents you seek pertaining to ABS reasons for choosing the current locations may contain information regarding detailed ABS sample methodology as well as the locations themselves.

For this reason, and consistent with the assessments made above, providing access to the documents pertaining the ABS' reasons for choosing the current locations will not be in the public interest.

I add that should the ABS proceed to process your request, it will be highly unlikely that the ABS would grant you access to this information, which is consistent with sections 47, 47E, 47F and 47G of the FOI Act.

Sections 47, 47E, 47F and 47G of the FOI Act are attached for your reference.

### **Assessment of the applicant's financial hardship:**

I have considered the evidence provided by you to support your request for the ABS to waive fees for processing your request.

As per the guidance provided by the Office of the Australian Information Commissioner, I note that while the ABS accepts your reasoning and evidence for requesting that charges be waived, the ABS is not obliged to waive or reduce this fee.



**Availability of freely-available information on the ABS website:**

The ABS publishes information on sampling methods and selections used for ABS household surveys. This information is freely available, is presented in reader-friendly, non-technical language, and relates to the information that you seek under the FOI Act.

My prior correspondence with you noted the following information, which is freely available on the ABS website:

- *ABS Surveys Charter, 2010* (ABS cat. no. 1008.0) provides a holistic explanation of how the ABS conducts statistical surveys.
- *Information Paper: Labour Force Survey Sample Design, May 2013* (ABS cat. no. 6269.0). The Labour Force Survey (LFS) is a component of the MPS and this document contains extensive information regarding survey methodology and sample design that will largely reflect that employed for the MPS.

In addition, I have been advised that the following information is also relevant to your request and freely available on the ABS website:

- *Labour Statistics: Concepts, Sources and Methods, 2013* (ABS cat. no. 6102.0.55.001), in particular:
  - Chapter 18, which provides an overview of the survey methodology used in ABS household surveys such as the MPS.
  - Chapter 20, which provides further detail on the aspects of survey design particular to the LFS (and MPS).

**Decision on your request:**

While I note your evidence of financial hardship, I have decided that there is insufficient public interest in providing you access to these documents and there are numerous, alternative sources of freely-available information on the matters sought in your request.

As a result, I have decided that the charges previously provided to you will be upheld.

Within 30 days of receipt of this notice you are required to either:

- pay the charge;
- pay a deposit with the remainder to be paid prior to receipt of documentation;
- apply for an internal review of my decision to uphold the charges; or
- withdraw your request.

Options for payment are attached.

If you fail to notify the ABS in a manner mentioned above within 30 days of receipt of this notice it will be taken that you have withdrawn your request.

In accordance with section 31 of the FOI Act, the 30 day limit for processing your request is suspended from the day that you receive this notice and resumes on either the day you pay the charge (in full or the required deposit) or the day on which this agency makes a decision not to impose a charge.

**Internal Review of the Decision**

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision by the ABS. Additionally you may request a review of this decision by the Information Commissioner. Details of both procedures involved in an application to review a decision are attached.

The ABS publishes all documents disclosed in response to FOI requests (other than personal or business information that would be unreasonable to publish) on the ABS website within 10 working days of the applicant receiving the response. This is consistent with the arrangements established by section 11C of the FOI Act, which formally commenced operation on 1 May 2011.

If you have any queries on this matter please contact the ABS FOI Contact Officer, at [freedomofinformation@abs.gov.au](mailto:freedomofinformation@abs.gov.au) or on (02) 6252 7203.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Lewis Conn', followed by a checkmark.

Lewis Conn  
Assistant Statistician  
Office of the Statistician and External Engagement  
Australian Bureau of Statistics

13 February 2015



## **FREEDOM OF INFORMATION ACT 1982**

### **Section 47 - Documents disclosing trade secrets or commercially valuable information**

- (1) A document is an exempt document if its disclosure under this Act would disclose:
- (a) trade secrets; or
  - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
- (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

### **Section 47E - Public interest conditional exemptions-certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

### **Section 47F - Public interest conditional exemptions-personal privacy**

#### *General rule*

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
- (a) the extent to which the information is well known;
  - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.

(3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

*Access given to qualified person instead*

(4) Subsection (5) applies if:

- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
- (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.

(5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

- (a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and
- (b) is to be nominated by the applicant.

(6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

"qualified person" means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

**Section 47G - Public interest conditional exemptions-business**

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:

- (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
- (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
- (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).



## **RIGHTS OF REVIEW, WHERE CHARGES IMPOSED**

### **INFORMATION ON RIGHTS OF REVIEW**

#### **1. APPLICATION FOR INTERNAL REVIEW OF DECISION**

Section 54 of the Freedom of Information Act gives you the right to apply for an internal review of the decision to impose a charge for documents in accordance with your request.

Application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

Application for a review of the decision should be addressed to:

ABS FOI Contact Officer  
Audit, Policy and Parliamentary Liaison Section  
Australian Bureau of Statistics  
Locked Bag 10  
BELCONNEN ACT 2617

#### **OR**

#### **2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION**

Section 54L of the Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

Applications for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner  
Office of the Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

#### **AND/OR**

#### **3. COMPLAINTS TO THE INFORMATION COMMISSIONER**

Section 70 of the Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner  
Office of the Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.