



29 July 2022

Our reference: LEX 67435

Mr Justin Warren

Only by email: foi+request-8731-e1ea04e9@righttoknow.org.au

Dear Mr Warren

Freedom of Information Request – Reconsideration of Charges

I refer to your correspondence to Services Australia (the agency) dated 29 June 2022, contending a charge should not be imposed in relation to the processing of your request made under the *Freedom of Information Act 1982* (FOI Act) on 11 April 2022.

On 27 May 2022, you revised your request and confirmed that you wished to seek access to:

- 'Emails relating to the following FOI requests (excluding attachments, correspondence from external third parties, documents you have already received and correspondence to or from the AAT and/or OAIC relating to your FOI requests):
- 2017, https://www.righttoknow.org.au/request/copy_of_public_interest_certific (Your reference: LEX 27960)
- 2018, https://www.righttoknow.org.au/request/decision_making_criteria_for_pot (Your reference: LEX 34896)
- 2019, https://www.righttoknow.org.au/request/copy_of_privacy_impact_assessmen (Your reference: LEX 46187)
- 2020, https://www.righttoknow.org.au/request/copy_of_executive_minute_to_the (Your reference: LEX 55424)'

Background

On 28 June 2022, the agency notified you, in accordance with section 29 of the FOI Act, you were to pay a charge for processing your request. The preliminary assessment of the charge was \$521.72 (preliminary charge). The preliminary charge was calculated as follows:

Search and retrieval time: 25.25 hours, at \$15.00 per hour:	\$ 378.75
Decision-making time (*after deduction of 5 hours): 7.15 hours, at \$20.00 per hour	\$ 142.97
TOTAL	\$ 521.72

Your contentions

On 29 June 2022, you provided the following submissions regarding the preliminary assessment of charges.

I draw your attention to Part 4 of the FOI Guidelines which states, at [4.24] (in part):

- An agency or minister cannot impose a charge:
 - for giving access to an individual's own personal information (s 7(1) of the Charges Regulations)

Section 7(1) of the Charges Regulation states:

There is no charge in respect of a request for, or for the provision of, access to a document that contains personal information of the applicant.

While the definition of personal information can be quite broad, the OAIC provides guidance at <https://www.oaic.gov.au/privacy/guidance-and-advice/what-is-personal-information>. Broadly, personal information is "information or an opinion about an identified individual, or an individual who is reasonably identifiable".

Section 7(1) of the Charges Regulation does not specify any threshold quantity of personal information of the applicant that a document must contain before it becomes "a document that contains personal information of the applicant". Therefore we must conclude that any document that contains any of my personal information is "a document that contains personal information of the applicant".

Accordingly I urge the department to ensure that the charges exclude any and all documents that contain my personal information. There is no evidence before me that the department has done so, and thus I contend that the department has wrongly assessed the charge and that it should be reduced or not imposed.

Rather than expending effort determining which of the documents contain my personal information, and excluding them from the charges calculation at this late stage, the department may decide instead that it would be faster and cheaper to simply not impose the charges. This may facilitate access to information promptly and at the lowest reasonable cost, as per s 3(4) of the FOI Act.

My decision

I am authorised under section 23 of the FOI Act to make internal review decisions. In accordance with section 54C of the FOI Act, I am required to make a new decision and decide if a charge is to be imposed, and the amount of that charge (if applicable).

The preliminary charge was calculated based on documents totalling 171 pages falling within the scope of your revised request.

The original decision to impose a charge considered that the documents within scope of your request, being internal emails relating to the processing of FOI requests, were non-personal information, as they relate primarily to internal agency processes.

I note the general principle underpinning section 29 of the FOI Act was described by O'Connor J in *Re Herald & Weekly Times and Secretary, Department of Finance and Administration* [2000] AATA 506. O'Connor J stated:

Section 29 establishes the prima facie position that charges should be imposed so that the applicants contribute to the cost of processing all their requests.

In *Tennant and Australian Broadcasting Corporation* [2014] AAT 452, the Tribunal also noted "there is an intention that a user pays principle should apply".

I consider the original decision to impose a charge was consistent with this prima facie position, having regard to the nature of the relevant documents falling within scope of your revised request and the time required to process them. As outlined above, the discretion to impose a charge when processing non-personal information is provided by the FOI Act and, as a matter of policy, assists agencies with costs incurred as a result of processing FOI requests on a reasonable user-pays basis.

I have reconsidered the relevant documents and formed the view they contain a mix of personal and non-personal information and some of that information is about you, albeit indirectly. To the extent

there is information not specifically about you, that information is likely to either be exempt in full or released to you.

Therefore, in this instance I have decided that it is appropriate not to impose a charge.

Further assistance

If you have any FOI questions please email FOI.LEGAL.TEAM@servicesaustralia.gov.au.

Yours sincerely,

Hannah

Authorised FOI Decision Maker
Freedom of Information Team
Information Access Branch | Legal Services Division
Services Australia

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a Freedom of Information decision

Before you ask for a formal review of a freedom of information decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

Complaints to the Australian Information Commissioner and Commonwealth Ombudsman

Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Australian Information Commissioner must be made in writing. The Australian Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Commonwealth Ombudsman may be made in person, by telephone or in writing. The Commonwealth Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.