



11 February 2015

Ms Vera Lystich

Our reference: LEX 12004

By email: foi+request-877eea95bcx@xxxxxxxxxxx.xxx.xx

Dear Ms Lystich

Your Freedom of Information Request – Charge decision

- I refer to your request dated 15 January 2015 and received by the Department of Human Services (the **department**) on the same date, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

‘Copies of reports into ‘suspected breaches of the APS Code of Conduct’ by Centrelink staff at the Boronia, Ringwood or Lilydale Centrelink Service Centres in Victoria.

...

To assist in processing my request, I am willing to limit its scope to only those documents prepared since January 2010, to the present. I am, of course, expecting the personally-identifying information of the individuals involved to be redacted.’

- I am an authorised decision-maker under section 23(1) of the FOI Act.

Decision on Charge

- The following is my decision in relation to your request for reduction or non-imposition of the charge imposed under the FOI Act (the **Charge**) and the reasons for my decision.
- I have decided to reduce the amount of the charge that was notified to you by 50% to **\$60.78**.

Background

- On 28 January 2015, the department notified you of the preliminary estimate of the charge for the processing your freedom of information (**FOI**) request, calculated as follows:

Search and retrieval time: 0.97 hours, at \$15.00 per hour:	\$14.55
Decision-making time (*after deduction of 5 hours): 5.35 hours, at \$20.00 per hour	\$107.00
TOTAL	\$121.55

*The FOI Act provides that the first five hours of decision making time are free of charge and this is reflected in the calculation.

6. On 29 January 2015, you wrote to the department by email, contending that the charge not be imposed on financial hardship grounds, public interest grounds, on the grounds of the Office of the Australian Information Commissioner's guidelines on the application of section 11C of the FOI Act and on the grounds that the charge was incorrectly calculated pursuant to section 29(1)(f)(ii) of the FOI Act.

Material Considered

7. I have taken the following material into account in making my decision:
 - the department's correspondence of 28 January 2015, notifying you of the charge;
 - your correspondence of 29 January 2015, contending that the charge should not be imposed;
 - documents falling within the scope of your request;
 - the FOI Act;
 - the *Freedom of Information (Charges) Regulations 1982* (the **Regulations**); and
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**).

Relevant legislation

8. Subsection 29(4) of the FOI Act provides that, where an applicant has notified an agency that the applicant contends that a charge should be reduced or not imposed in relation to a request under the FOI Act, then the agency may decide that the charge is to be reduced or not imposed.
9. Subsection 29(5) of the FOI Act provides that, without limiting the matters that the agency may take into account when making a decision about whether to reduce or not impose a processing charge, the decision maker must consider:
 - whether payment of a charge, or part of it, would cause financial hardship to an applicant; and
 - 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.
10. Subsection 29(8) of the FOI Act provides that, if an applicant makes a contention about a charge as mentioned in subsection 29(4) and the agency makes a decision to reject the contention in whole or in part, then the agency must give the applicant written notice of the decision and the reasons for the decision.

Calculation of the charge

11. As a preliminary step in my consideration of whether a processing charge should apply to this request, I have examined the calculations which were used to determine the charge.
12. The Charge notified to you on 28 January 2015, totalled **\$121.55** and was calculated on the basis set out in paragraph 5, above.
13. In calculating processing charges for FOI requests, the department applies relevant provisions of the Regulations, the FOI Act and the Guidelines in relation to the amounts it is permitted to charge.
14. The department calculates the amount it may charge based on:
 - the time taken to search for, and retrieve, files containing documents within scope;
 - the number of third parties with whom it will be necessary to consult in the course of making a decision regarding the release of the documents;

- the number and size (number of pages) of the documents that have been identified as falling within the scope of the requests and the resultant time taken for decision-making in relation to each of those pages (less the first five hours of decision-making, which are free of charge; and
- the number of pages considered sensitive, requiring redaction (and therefore potentially extra decision-making time).

15. Based on estimates and documents received from the department's People Services Division, it was estimated that it had taken approximately 0.97 hours to locate and collate the relevant documents, and would take a further 10.35 hours to examine the documents, undertake any necessary consultation and prepare a decision on access.

16. Having examined the documents within the scope of your request, the calculation of the charge and the reasoning behind it, I am of the view that the Charge calculated fairly reflects the work involved in processing your request and is a fair contribution towards the cost of processing your request.

Reasons for decision

17. I note that subsection 29(5) of the FOI Act prescribes matters that I must take into account. My consideration of those matters is set out below.

Financial Hardship

18. Paragraph 29(5)(a) of the FOI Act provides that, without limiting the matters an agency may take into account in determining whether or not to reduce or not to impose the charge, the agency must take into account whether the payment of the charge, or part of it, would cause financial hardship to the applicant.
19. Paragraph 4.52 of the Guidelines provides that, in applying paragraph 29(5)(a) of the FOI Act, 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 charge. Financial hardship means more than an applicant having to meet a charge from his or her own resources.
20. In your email of 29 January 2015, you requested that the charge be waived as the charge "...would constituted approximately a third (32.4%) of my weekly disposable income".
21. On 11 February 2015, the department received a copy of your fortnightly household budget as evidence of your financial hardship.
22. On the basis of this evidence, I have decided that imposing the charge would cause you financial hardship such that the department should reduce the amount of the charge.

Public Interest

23. Paragraph 29(5)(b) of the FOI Act provides that, without limiting the matters the agency may take into account in determining whether or not to reduce or not to impose the charge, the agency must take into account 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.

24. Relevantly, paragraph 4.55 of the Guidelines states:

“an applicant relying on s 29(5)(b) should identify or specify the ‘general public interest’ or the ‘substantial section of the public’ that would benefit from disclosure. This may require consideration both of the content of the documents requested and the context in which their public release would occur”.

25. In addition, paragraph 4.54 of the Guidelines state that:

“...the public interest test for waiver in s 29(5)(b) is different to the public interest test in s 11A(5) that applies to conditionally exempt documents.”

26. In your email of 29 January 2015, you refer to *Carver and Fair Work Ombudsman* [2011] AICmr 5 (27 July 2011) (the **Carver case**) and submit that:

“The Office of the Australian Information Commissioner (OAIC)’s Freedom of Information guidelines confirm that you may waive or vary a charge if releasing the document in question would be in the general public interest (1)*.

In “Carver and Fair Work Ombudsman”(2)*, a similar case involving the release of documents relating to APS Code of Conduct investigations, the FOI Commissioner found that:

“the principal factor favouring disclosure in this IC review is the importance of transparency in investigations of the work-related conduct of public officials... the public interest in ensuring that complaints... are properly and appropriately investigated and dealt with.”

On this basis, given there is precedent that the release of reports of APS Code of Conduct investigations is in the public interest, I contend the charge should not be imposed.”

* footnotes have been omitted.

27. I am not persuaded by these submissions, for the following reasons:

- the comments made by Dr Popple in the Carver case relate to the application of the public interest test in the context of an exemption rather than in relation to the application of charges;
- the facts and documents in the Carver case differ from the documents within the scope of your request;
- the Carver Case does not create a precedent that the release of reports regarding APS Code of Conduct investigations are in the public interest;
- it is well established principle that the decisions of administrative bodies, such as the Information Commissioner, while instructive, do not establish precedent. Rather, each matter before an administrative body will be determined on its merits; and
- you have not identified the ‘general public interest’ or the ‘substantial section of the public’ that would benefit from disclosure.

28. Given the above, I have decided that there is no public interest in reducing or waiving the charge.

Other grounds for reduction of the charge

29. Subsection 29(4) of the FOI Act provides a general discretion to reduce or not to impose a charge which goes beyond matters relating to financial hardship and the public interest. In considering this general discretion, I have had regard to whether the charge imposed appropriately reflects the cost of processing your request and whether the documents within the scope of your request are similar to documents that have been published on the department's website under section 11C of the Act.
30. With regard to whether the charge imposed appropriately reflects the cost of processing your request, as outlined above, I consider that the calculation of the charge fairly reflects the work in processing your request. I note that processing charges are designed to be a contribution to the cost of processing FOI requests and do not compensate the full costs associated with the processing of a request.
31. I note also that, in recognition of the general public interest in allowing access to government information, the FOI Act provides for the first five hours of decision-making time to be free of charge for all applicants. This discount was applied to the calculation of the charge notified to you on 28 January 2015.
32. In regard to whether the documents within the scope of your request are similar to documents that have previously been published on the department's website under section 11C of the Act, I consider that the documents within the scope of your request are broadly similar to the documents published on 16 October 2012. However, it is important to note that every code of conduct matter is unique. I have decided that this point, on its own, does not warrant a reduction in charges in this instance.

Conclusion

33. On balance, after weighing the arguments that you have submitted, I have decided to reduce the amount of the Charge by 50%. The amount payable by you is **\$60.78**.

Options to proceed with your request

34. In order for your request to continue to be processed, you are required to respond in writing within 30 days of receipt of this notice in accordance with one of the following options:
 - A. Pay the Charge (or deposit of **\$15.19**);
 - B. Request a review of the decision to impose the charge; or
 - C. Withdraw your request.

35. Further information on each of these options is set out below.

Option A – Pay the Charge

36. The amount due should be paid by cheque or money order and made out to the Collector of Public Monies. Please quote reference number LEX 12004 with your payment.
37. Please send this cheque or money order to:

FOI and Information Release Branch
Legal Services Division
Department of Human Services
18 Canberra Ave, Forrest ACT 2603

38. If you elect to pay the reduced charge amount, please email FOI.Legal.Team@humanservices.gov.au once you have posted your cheque or money order to advise us of your payment.

Option B – Request a review of the decision to impose the Charge

39. Please find attached a document setting out your rights of review at **Attachment A**.

Option C – Withdraw your request

40. If you wish to withdraw your request, you may do so in writing. Alternatively, you may wish to consider narrowing the terms of your request. If the scope of your request can be reduced, the charge may be recalculated accordingly.

Further Information

41. Should you have any enquiries concerning this matter, please contact me at FOI.Legal.Team@humanservices.gov.au.

Yours sincerely,

FOI Delegate
FOI and Information Release Branch
Department of Human Services

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Application for review of decision

The *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by:

- (i) an internal review officer in the Department of Human Services; or
- (ii) the Information Commissioner.

Internal Review

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- made in writing;
- made within 30 days of receiving this letter; and
- sent to the address at the head of this letter.

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review officer decides not to grant you access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time you are notified of the internal review decision.

Please note that if you apply for an internal review and a decision is not made by an internal review officer within 30 days of receiving the application, you have the right to seek review by the Information Commissioner for a review of the original FOI decision on the basis of a 'deemed refusal' decision. An application for Information Commissioner review in this situation must be made within 60 days of the date when the internal review decision should have been made (provided an extension of time has not been granted or agreed).

Information Commissioner review

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au Post: GPO Box 2999, Canberra ACT 2601 Fax: +61 2 9284 9666 Email: xxxxxxxxx@xxxx.xxx.xx

If a person has sought an internal review and no result of that review is provided within 30 days, then the applicant may apply to the Information Commissioner to review the matter.

An application form is available on the website at 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.

Complaints to the Commonwealth Ombudsman and Information Commissioner

Commonwealth Ombudsman

You may complain to the 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 Ombudsman may be made in person, by telephone or in writing. The 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.

Information Commissioner

You may also complain to the 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 Information Commissioner must be made in writing. The Information Commissioner's contact details are:

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

Office of the Australian Information Commissioner (OAIC) is disbanding

Please note: The Australian Government announced as part of the 2014-15 Budget that the Office of the Australian Information Commissioner (OAIC) will be disbanded. The OAIC remains operational until further notice.

For further information on how the OAIC will deal with IC reviews and FOI complaints please visit their website at www.oaic.gov.au