



Australian Government
**Department of Employment
and Workplace Relations**

Our Ref LEX302

Justin Warren
Right to Know

By email: foi+request-8955-c14b3ef3@righttoknow.org.au

Dear Mr Warren

Your Freedom of Information request - charge decision

I refer to your request, received by the former Department of Education, Skills and Employment on 28 May 2022, for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

“The business case document(s) (or equivalent) for the Points Based Activation System (<https://www.dese.gov.au/new-employment-services-model/resources/points-based-activation-system>), including any attachments. I request only the final version of the document(s) that were submitted for approval of the proposal.

- Documents constituting a risk register or equivalent documentation describing the risks from the proposal, risk ratings, proposed treatments and mitigations, etc. Where multiple versions of such documents exist (such as drafts) I only request two versions (if they are different):

1. the version current when the proposal was submitted for approval, and 2. the version current on 27 May 2022 at 9am Australia/Melbourne time.

- Documents, including emails, containing the submission of the proposal for consideration and approval.

- Meeting minutes or equivalent that document approval of the proposal.”

Transfer of FOI request

As advised on 8 July 2022, due to recent machinery of government changes, from 1 July 2022, the former Department of Education, Skills and Employment became the Department of Education and a newly created department, the Department of Employment and

Workplace Relations (department) assumed responsibility for the skills and employment portfolios. As the subject matter of your request is more closely connected with the department's functions, the department has accepted a full transfer of your request pursuant to section 16 of the FOI Act.

My decision

I have been appointed decision-maker on your request and have decided to affirm the preliminary charge of \$370. Please refer to the notice of charge dated 16 June 2022 for options on how to pay the balance of the charge.

The reasons for my decision, including relevant sections of FOI Act, are set out at **Attachment A**.

You can ask for a review of my decision

If you disagree with any part of the decision, you can ask for a review. There are two ways you can do this. You can ask for an internal review by the department or an external review by the Australian Information Commissioner.

You can find information about your rights of review under the FOI Act, as well as information about how to make a complaint at **Attachment B**.

Further assistance

If you have any questions, please email foi@dewr.gov.au.

Yours sincerely

Claudia

Claudia
Authorised decision maker
Department of Employment and Workplace Relations

19 July 2022

REASONS FOR DECISION

What you requested

“The business case document(s) (or equivalent) for the Points Based Activation System (<https://www.dese.gov.au/new-employment-services-model/resources/points-based-activation-system>), including any attachments. I request only the final version of the document(s) that were submitted for approval of the proposal.

- Documents constituting a risk register or equivalent documentation describing the risks from the proposal, risk ratings, proposed treatments and mitigations, etc. Where multiple versions of such documents exist (such as drafts) I only request two versions (if they are different):

- 1. the version current when the proposal was submitted for approval, and 2. the version current on 27 May 2022 at 9am Australia/Melbourne time.*

- Documents, including emails, containing the submission of the proposal for consideration and approval.

- Meeting minutes or equivalent that document approval of the proposal.”

What I took into account

In reaching my decision, I took into account:

- your original request dated 28 May 2022
- departmental discussions and correspondence with you
- the documents that fall within the scope of your request
- consultations with departmental officers about the nature of the documents and the operating environment and functions of the department
- consultation with another Commonwealth Government agency about documents which contain information concerning it
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- the *Freedom of Information (Charges) Regulations 2019* (FOI Regulations)
- the FOI Act.

Reasons for my decision

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided to affirm the charge of \$370. My findings of fact and reasons for this decision are discussed below.

Preliminary assessment of charge

As a preliminary matter, I have reviewed the calculation of the charge.

On 16 June 2022, the former decision-maker at the Department of Education, Skills and Employment advised you that there were approximately 10 documents relevant to your request. The preliminary assessment of the charge was calculated as follows:

Search and retrieval time: 8 hours, at \$15.00 per hour	\$120
Decision-making time (*after deduction of 5 hours): 12.5 hours, at \$20.00 per hour	\$250
TOTAL	\$ 370

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

Since you were notified of the preliminary estimate of the charge, I have identified a further seven documents within the scope of your request, bringing the total amount of pages to 266 pages. This material was not originally included in the preliminary estimate provided to you on 16 June 2022. Given the additional number of documents identified, this increases the processing charge to \$513.

I have considered the actual cost of processing your request, for the purposes of considering whether to adjust the amount of the charge under regulation 10 of the FOI Regulations. In light of the additional material identified as being within the scope of your request, I am satisfied that the actual cost of processing your request is more than the preliminary estimate of the charge and accordingly, no adjustment is necessary.

Your contentions

On 20 June 2022, you contended that the charge for processing your request under the FOI Act should be reduced or not imposed on public interest grounds. Specifically, your correspondence provided that:

“...all charges in relation to this request be waived on public interest grounds. The scope and scale of employment support services affects a large proportion of the Australian populace at any one time. The efficient and effective use of public resources to provide employment support services is a matter that should be open to public scrutiny, discussion, comment, and review.... The program will also affect a substantial section of the public, and it is therefore in their interest that they are able to scrutinise, discuss, comment, and review the business case used to justify the system that will directly affect them.”

Financial hardship

Under section 29(5)(a) of the FOI Act, I am required to consider whether payment of the charge would cause financial hardship to you.

Paragraph 4.101 of the FOI Guidelines relevantly provides:

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 and your family, or other people for whom you are responsible.

The FOI Guidelines further provide that an applicant relying on the grounds of financial hardship would ordinarily be expected to provide some evidence of financial hardship, such as receipt of an income support payment or evidence of income, debts or assets. In this regard, I note that you have provided no such evidence and accordingly, I am not satisfied that the payment of the charge would cause financial hardship to you.

Public interest

Under section 29(5)(b) of the FOI Act, I am required to consider whether giving access to the documents would be in the general public interest or the interest of a substantial section of the public.

Paragraph 4.107 of the FOI Guidelines relevantly provides:

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 this disclosure (s 29(1)(f)(ii)). This may require consideration both of the content of the documents requested and the context in which their public release would occur. Matters to be considered include whether the information in the documents is already publicly available, the nature and currency of the topic of the public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents.

The FOI Guidelines also provide that there is no presumption that the public interest test is satisfied by reason only that the applicant is a Member of Parliament, a journalist or a community or non-profit organisation. Further, the FOI Guidelines provide that it is necessary to go beyond the status of the applicant and to look at other circumstances.

I have taken into account your submissions in relation to the Points Based Activation System and your views concerning the relevance of this to the general public interest, or a substantial section of the public.

I accept that there is a broad public interest in the material within the scope of your request, including that the documents relate to a decision by the department that has been a topic of public interest or discussion, and disclosure of the documents would inform the public as to why or how the decision was made.

Whilst there is a public interest in the release of information within the scope of your request, I have balanced this against a number of countervailing factors, which are discussed below.

I note that some of the documents you have requested contain Cabinet-related material, and I do not consider that the release of such material, at this time, is in the general public interest, or the interest of a substantial section of the public. I consider that this factor mitigates against non-imposition of the charge.

I have also had regard to the resource implications for the department in processing your FOI request. The department was required to undertake extensive searches to locate documents relevant to your request. In addition, as part of the decision making process, the department will be required to examine and consider each page captured by the scope of your request to make a decision on access, undertake consultation with the Department of the Prime Minister and Cabinet and departmental officers, and prepare a statement of reasons for the decision.

On balance, and after taking all of the above into account, I have decided that whilst there is a broad public interest in the documents, a waiver or reduction of the charge is not appropriate in this instance, as the preliminary charge of \$370 does not include the additional seven documents that were identified after the charge was notified. Any reduction in the charge due to the public interest in the documents is mitigated by the resource implications for the department in making a decision on access in relation to the additional seven documents (totalling 103 pages).

I have decided that, in this instance, it is appropriate to affirm the charge.

YOUR RIGHTS OF REVIEW

Asking for an explanation of an FOI decision

Before you ask for a formal review of an FOI decision, you can contact us and we will explain the decision to you.

Asking for a formal review of an FOI decision

If you still believe the decision is incorrect, the FOI Act gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

- an internal review officer in the department and/or
- the Australian Information Commissioner.

There are no fees for applying for a formal review.

Applying for an internal review by an internal review officer

If you apply for internal review, a different decision maker to the decision maker who made the original decision will review your request. The internal review decision maker will consider all aspects of the original decision afresh and decide whether the decision should change.

An application for internal review must be made in writing within 30 days of receiving this letter. You can lodge your application:

Post: Commercial and Information Law Branch
Department of Employment and Workplace Relations
Location Code: C50MA1
GPO BOX 9828
CANBERRA ACT 2601

Email: foi@dewr.gov.au

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can lodge your application in one of the following ways:

Online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Complaints to the Australian Information Commissioner

Australian Information Commissioner

You may complain to the Australian Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Australian Information Commissioner must be made in writing and can be lodged in one of the following ways:

Online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001