



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

Our ref: LEX 418

Mr Justin Warren

By email: foi+request-8995-c14b3ef3@righttoknow.org.au

Dear Mr Warren

Freedom of Information – Internal review decision - Charges

1. I refer to your email of 19 August 2022 requesting an internal review of the Department of Employment and Workplace Relations' (**the department's**) charges decision dated 19 July 2022 made under section 29(4) of the *Freedom of Information Act 1982 (FOI Act)*.
2. I am authorised to make decisions in respect of FOI requests under section 23(1) of the FOI Act.
3. Your internal review application was made outside the 30-day statutory timeframe (specified in section 54B of the FOI Act). However, I have decided to exercise my discretion to grant you an extension of time and accept your application.

Decision summary

4. I have decided to vary the charges decision dated 19 July 2022, by reducing the charge amount by 50%. This means that the amount of charge you are liable to pay is \$185.
5. The reasons for my decision are set out at **Attachment A**.

Partial refund of charges paid

6. The department will arrange to refund your credit card in the amount of \$185.00.

Rights of review

7. I have enclosed information about your rights of review under the FOI Act at **Attachment B**.
8. Should you have any questions, please do not hesitate to contact me via email at foi@dewr.gov.au.

Yours sincerely

Tegan

Tegan
Authorised decision maker
Freedom of Information Team
Department of Employment and Workplace Relations

19 September 2022

REASONS FOR INTERNAL REVIEW DECISION

Background

1. On 10 June 2022, the former Department of Education, Skills and Employment (DESE) received your request for access to the following documents under the FOI Act. Following machinery of government changes, your request was transferred to this department pursuant to section 16 of the FOI Act.
2. The scope of your request (which was clarified with and confirmed by you in your email of 13 June 2022) is as follows:

Terms of your request	Interpretation of the request
<p><i>'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.'</i></p>	<p>Final version of the documents, including any attachments, that the department submitted for the final approval of the Points Based Activation System as part of the New Employment Services Model.</p>
<p><i>"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):</i></p> <ol style="list-style-type: none"> <i>1. the version current when the proposal was submitted for approval, and</i> <i>2. the version current on 29 May 2022 at 9am Australia/Melbourne time."</i> 	<p>As per the terms of the request.</p>
<p><i>"Documents, including emails containing the submission of the proposal for consideration and approval."</i></p>	<p>Documents, including emails, containing the submission of the final proposal for approval of the Points Based Activation System as part of the New Employment Services Model.</p>
<p><i>"Meeting minutes or equivalent that document approval of the proposal."</i></p>	<p>Meeting minutes (or equivalent documents) that document the approval of the department's final proposal to proceed with the Points Based Activation System as part of the New Employment Services Model.</p>

3. On 13 June 2022, you advised by email that the scope of your request also includes staff names, signatures, position titles, identification numbers and contact details.
4. On 16 June 2022, the former DESE advised you that the preliminary estimate of the charge for processing your request was \$370. On 20 June 2022, you contended that the charge should be reduced or not imposed.
5. On 8 July 2022, the department advised you that following machinery of government changes, your request had been transferred to this department pursuant to section 16 of the FOI Act.
6. On 19 July 2022, the department notified you of its charges decision under section 29(4) of the FOI Act, to affirm the preliminary charge of \$370. On 19 August 2022, you requested an internal review of the charges decision.

Reasons

7. In accordance with section 54 of the FOI Act, FOI applicants have a right to apply for internal review of an 'access refusal decision', as defined in section 53A of the FOI Act. An access refusal decision includes a decision relating to the imposition of a charge or the amount of a charge.
8. In reaching my decision, I took the following material into account:
 - the charges decision dated 19 July 2022
 - your correspondence dated 19 August 2022 seeking internal review of the department's charges decision
 - the documents that fall within the scope of your request
 - the FOI Act
 - the *Freedom of Information (Charges) Regulations 2019 (FOI Regulations)*
 - the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).
9. I understand your internal review application relates to the imposition of the charge. You have not made any contentions in relation to the calculation of the charge.
10. Section 29 of the FOI Act relevantly provides:
 - (4) Where the applicant has notified the agency or Minister, in a manner mentioned in subparagraph (1)(f)(ii), that the applicant contends that the charge should be reduced or not imposed, the agency or Minister may decide that the charge is to be reduced or not to be imposed.
 - (5) Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not impose the charge, the agency 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.
11. My consideration as to whether the charge amount of \$370 should be waived or reduced is addressed below.

Financial hardship

12. You have not contended that the charge should be waived or reduced on financial hardship grounds. In the absence of any evidence indicating that this is the case, I am not satisfied that payment of the charge has caused you financial hardship.

Public interest

13. In your correspondence of 20 June 2022, you contended that the charge should be reduced or not imposed on public interest grounds. In particular, you submitted:

"The scope and scale of employment support services affects a large proportion of the Australian populace at any 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."

14. A decision to reduce or not impose a charge requires consideration of whether the provision of access to the documents the subject of the request is in the general public interest, or in the interest of a substantial section of the public. In other words, there must be a benefit flowing generally to the public or a substantial section of the public from disclosure of the documents in question. This requires me to consider the nature of the documents and the context of their release.
15. The documents relating to your FOI request contain information concerning the Points Based Activation System (**PBAS**). I acknowledge that the subject matter of your request is a matter of general interest to the public, or at least a substantial section of the public, including job seekers in receipt of income support payments.
16. However, I also consider the degree of benefit flowing to the public would not necessarily result in a material contribution to public scrutiny, discussion, comment and review, having regard to:
- the particular nature of certain information in the documents
 - the fact that the material in the documents is unlikely to shed any meaningful light on the efficient and effective use of public resources to provide employment support services
 - the considerable amount of information in relation to PBAS that is already publicly available material

Other relevant considerations

17. Although the FOI Act provides for a discretion to reduce or waive charges in appropriate circumstances, the general principle underpinning the charges mechanism in section 29 has been described by the Administrative Appeals Tribunal (**AAT**) as follows¹:

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

¹ *Re Herald & Weekly Times and Secretary, Department of Finance and Administration* [2000] AATA 506 at [48].

18. The AAT has also held, when considering the principles and factors in relation to the reduction or waiver of FOI processing charges²:

One such matter is the intention discernible in the imposition of the charge that the amount should reflect the time and effort involved in accessing the requested documents... In other words, there is an intention that a user pays principle should apply.

19. I have considered the considerable time, effort, and resourcing impact involved in processing your request, having regard to the nature and complexity of the documents and information contained therein, as well as extensive internal consultation and with the Department of the Prime Minister and Cabinet which was not factored into the calculation of the charge.
20. I have also taken into account the fact that the charge amount does not take into account the processing of an additional seven documents (comprising 103 pages) that were identified through searches following the issue of the preliminary estimate of charge notice. In effect, you have already received the benefit of having these documents processed without an additional charge being imposed.

Reduction in charges

21. Having weighted the factors outlined above, I consider that it would be appropriate in the circumstances to reduce the charge by 50%. This balances the public interest in providing access to documents, with the resource impact to the department in processing the request (including documents and processing tasks that were not factored into the charge calculation).
22. Applying the 50% reduction on public interest grounds, I have decided that you are now liable for a charge in the amount of \$185. This amount will be deducted from the amount already paid and the balance refunded to you.

² *Tennant and Australian Broadcasting Corporation* [2014] AAT 452 at [14]-[15].

YOUR RIGHTS OF REVIEW

Applying for external review by the Australian Information Commissioner

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

You will have 30 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