



16 March 2015

Ben Fairless

Our reference: LEX 12159

By email: foi+request-897-c3ddefe6@righttoknow.org.au

Dear Mr Fairless

Your Freedom of Information Request – Charge decision

1. I refer to your request dated 30 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:

‘...a copy of all current policies and guidelines issues regarding the use of SecureMail.
...
a copy of any guide issued by the Department to it’s officers in the use of SecureMail.’

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

Decision on Charge

3. 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.
4. I have decided not to reduce the amount of the charge that was notified to you.

Background

5. On 24 February 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: 1.07 hours, at \$15.00 per hour:	\$16.05
Decision-making time (*after deduction of 5 hours): 4.79 hours, at \$20.00 per hour	\$0.00

TOTAL	\$16.05
--------------	----------------

*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 16 February 2015, you wrote to the department by email, seeking that the charge not be imposed on the grounds that the charge was incorrectly calculated pursuant to section 29(1)(f)(ii) of the FOI Act because, you contended, the requested information should be available through the department's Information Publication Scheme (**IPS**) and because the method of payment offered for FOI charges is inconsistent with the objective of the FOI Act.

Material Considered

7. I have taken the following material into account in making my decision:

- the department's correspondence of 24 February 2015, notifying you of the charge;
- your correspondence of 25 February 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. Section 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. Section 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. Section 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 24 February 2015, totalled **\$16.05** 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. In matters where an applicant requests documents the department holds, 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 Cyber Security Branch, it was estimated that it had taken approximately 1.07 hours to locate and collate the relevant documents, and would take a further 4.79 hours to examine the documents, apply any redactions, 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 you have not contested the charge on the basis of any of the prescribed matters that must be taken into account under subsection 29(5) of the FOI Act.
18. Section 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, whether the documents you have requested should be available through the department's IPS and whether the methods of payment offered are inconsistent with the objective of the FOI Act.
19. With regard to whether the charge imposed appropriately reflects the cost of processing your request, as outlined above, 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.
20. 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 24 February 2015.
21. In regard to whether the documents within the scope of your request should be available through the department's IPS, I am not persuaded by this argument.
22. Section 8A(1) of the FOI Act provides that operation information is information held by the agency to assist the agency to perform or exercise the agency's functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity or class of persons or entities).
23. In contrast to this definition I am of the view that the documents you have requested are not operational information because they are not relied on to make administrative decisions and on that basis they do not affect members of the public. The documents you have requested are policies and guides on the use of Secure Email. Nothing in the documents requires an officer to undertake a decision, nor do they provide a guide to making administrative decisions related to, for example, the implementation of social security law.

24. In regard to whether the methods of payment offered are inconsistent with the objectives of the FOI Act, I am not persuaded by this argument.
25. In the letter dated 24 February 2015, the department indicated that the Charge should be paid by cheque or money order made out to the Collector of Public Monies. These methods are used by the FOI and Information Release Branch of the department because it is not possible for the Collector of Public Monies to receive payment for FOI request electronically for this department. This is because these payments cannot be identified as FOI charges in the context of the other monies the department collects. Therefore, providing applicants with the abovementioned payment options is not a mechanism used by the department to discourage an applicant from exercising the right of access conferred by the FOI Act but simply the only feasible methods available to the department at this time.
26. On this basis, I do not consider that requiring applicants to pay charges by cheque or money order is contrary to the objects of the FOI Act or anything in the Guidelines.

Conclusion

27. On balance, after weighing the arguments that you have submitted, I have decided not to reduce the charge.

Options to proceed with your request

28. 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;
- B. Request a review of the decision to impose the charge; or
- C. Withdraw your request.

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

Option A – Pay the Charge

30. 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 12159 with your payment.
31. 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

32. 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

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

Option C – Withdraw your request

34. 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

35. 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: enquiries@oaic.gov.au

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