



29 April 2015

Mr Ben Fairless

Our reference: **LEX 12669**

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

Dear Mr Fairless

Freedom of Information Request: LEX 12669 – Updated Internal Review Decision on Charges

1. I refer to the internal review decision, dated 8 April 2015, that the Department of Human Services (the **department**) notified to you in relation to the charges the department imposed for your FOI request LEX 12236.
2. I am an authorised decision-maker under section 23(1) of the *Freedom of Information Act* (the **FOI Act**). I am also a separate decision-maker to the FOI Delegate involved with LEX 12236.

Background

3. On 12 February 2015, you requested access under the FOI Act to the following documents:

*‘106-03010000 First Contact Service Offer (FCSO)
106-03010010 Opening the First Contact Service Offer application
106-03010020 Running the First Contact Service Offer (FCSO)
106-03010030 First Contact Service Offer screens and functions’*

4. On 16 February 2015, the department issued you with a preliminary assessment of the charges involved in processing your request (as the documents contained non-personal information). The department also advised you in this correspondence that four documents (totalling 46 pages) had been identified as falling within the scope of your FOI request. In accordance with section 29 of the FOI Act, it was determined that you were liable to pay an estimated charge of \$24.03 for the processing your FOI request.
5. 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 subparagraph 29(1)(f)(ii) of the FOI Act because, you contended, the requested information should be available through the department’s Information Publication Scheme (the **IPS**).

6. On 5 March 2015, the department notified you of a charges decision, after considering your submission. The department decided not to reduce the amount of the charge that was notified to you on the following basis:
- The department did not consider that the documents within the scope of your request should be available through the department's IPS, because they are not relied on to make administrative decisions and consequently do not affect members of the public; and
 - The department was also satisfied that the preliminary assessment of charges appropriately reflected the cost of processing your request.
7. On 9 March 2015, you requested an internal review of the department's decision to impose charges for FOI request 12236 in the following terms:

'I am writing to request an internal review of Department of Human Services's handling of my FOI request 'Operational Information - FCSO'.

The requirement for Money Order or Cheque is an unreasonable burden

As of the date of this email, it is \$10 to obtain a cheque from the Commonwealth Bank of Australia, and \$8.95 for a Money Order.

These additional expenses increase the cost and effort involved in paying for the request. The time and effort required to obtain a Bank Cheque or Money Order in comparison to EFT or credit card appears to be an attempt by the Department to make it as difficult as possible for applicants to pay charges.

The Department and it's officers are be fully aware that the use of Money Orders and Cheques is on the decline in Australia. Australia has had access to EFT since the early 90's, and BPAY has been available in Australia since 1997.

In fact, the Department has electronic payment methods in place for clients who are repaying monies owed to the Commonwealth.

The Freedom of Information Act 1982 (Cth) relevantly states at s.3(4):

"The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost."

4.3 of the FOI Guidelines relevantly state:

"A charge must not be used to discourage an applicant from exercising the right of access conferred by the FOI Act."

The Department's failure to accept EFT would appear to be an attempt to discourage applicants from excising their rights under the Freedom of Information Act. As I have demonstrated above, the Department already has EFT processes in place for the payment of Suppliers and Clients of the Department.

Accordingly, as the Department will not accept EFT payments (as previously indicated in other requests) I contend that any charge, even the lowest reasonable charge, is inconsistent with the objectives of the FOI Act while the Department insists on refusing to accept payments for FOI differently from payments from other clients of the Department.'

8. On 8 April 2015, the department provided you with an internal review decision that affirmed that the charges payable for FOI request 12236 was \$24.03. The department considered that the charges should not be reduced, or waived, on the following basis:
- the department was not satisfied that you had provided sufficient evidence of financial hardship;
 - the documents would not be in the general public interest to release at a reduced charge, or for free, as they do not assist the department to make administrative decisions and therefore do not affect members of the public; and
 - the department was not satisfied that you had put forward other relevant considerations that sufficiently weighed in favour of reducing, or waiving, the charges.

Updated internal review decision

9. Upon further reflection and consideration of the individual circumstances of this matter, including further advice on the sensitivities in the documents, the department has decided to waive the processing charge associated with FOI request 12236. Consequently, the department has recommenced processing your FOI request and you will not be required to pay a fee in relation to it.
10. Please note that this decision supersedes the internal review decision notified to you on 8 April 2015.

Appeal Rights and further contact

11. If you do not agree with my decision, you may apply to the Information Commissioner for a review of the decision. I have attached an information sheet that explains your rights of review under the FOI Act (see **Attachment A**).
12. If you have any questions about this internal review decision, or wish to discuss, please contact FOI.Legal.Team@humanservices.gov.au, citing LEX 12669.

Yours sincerely

FOI Delegate
FOI and Information Release Branch
Department of Human Services
Email: FOI.Legal.Team@humanservices.gov.au

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 section 54L of the FOI Act, you can apply for a review of this decision by the Information Commissioner.

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