



29 April 2015

Mr Ben Fairless

Our reference: **LEX 12814**

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

Dear Mr Fairless

Freedom of Information Request: LEX 12814 – Updated Internal Review Decision on Charges

1. I refer to the internal review decision, dated 15 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 12159.
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 12159.

Background

3. On 30 January 2015, you requested access under the FOI Act to the following documents:

‘...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.’

4. On 24 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 three documents (totalling 18 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 \$16.05 for the processing your FOI request.
5. On 25 February 2015, you wrote to the department by email, seeking that the charge, calculated pursuant to subparagraph 29(1)(f)(ii) of the FOI Act, not be imposed as you contended that:

- the information should be released under the department's Information Publication Scheme (the **IPS**); and
 - if the information is not released under the IPS, the charge should not be imposed as the method of payment offered is inconsistent with the objectives and spirit of the FOI Act.
6. On 16 March 2015, the department notified you of a charges decision, after considering your submissions. 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;
 - the department was not persuaded by your argument that the methods of available to you, to pay the charges imposed for FOI request 12159, were inconsistent with the objectives of the FOI Act; and
 - the department was also satisfied that the preliminary assessment of charges appropriately reflected the cost of processing your request.
7. On 16 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 'Polices about the use of "SecureMail"'.

Firstly, I disagree with paragraphs 21-23 of the decision letter.

The Department contends that the documents "are not relied on to make administrative decisions and on that basis they do not affect members of the public."

But the decision to use this method of communication, for example in relation to the Right to Know website, does affect members of the public (who, for example, may wish to see how the Department is responding to FOI requests). These guidelines would, I presume, advise officers on appropriate times to use the service (and potentially appropriate times not to use the service). These would therefore affect the judgement of an officer in using the service, and would be useful to determine if officers of the Department have failed to comply with Departmental Guidelines.

Further, I disagree with the statements made in paragraph 24 to 26 of the letter issued by the Department.

The Department says that it "indicated that the Charge should be paid by cheque or money order made out to the Collector of Public Monies." and that it could not accept payment for FOI charges because "these payments cannot be identified as FOI charges in the context of the other monies the department collects".

In case the Department was not aware, BPay Payments can be made with a unique reference number, as can payments made via EFT. Furthermore, if I was to send a cheque to the Department, it would have to deposit that cheque into a Bank Account (I would not be issuing a cheque that could be cashed into cash).

If the Department is going to deposit my cheque into a bank account, why can I not directly pay into the bank account with a unique reference (such as the FOI Reference number), and provide a receipt of payment. This is both cheaper for the Department and cheaper for me.

Surely it is not outside the realm of possibility for the Department to find a payment via a unique reference number?!

The Department allows it's clients to pay via a range of methods. I assume the Department also pays it's contractors via EFT. The arguments raised by the Department do not correspond to the technical features provided by EFT or BPAY to ensure that payments can be allocated against. I have yet to encounter an agency that refuses to accept payment via EFT (even the Department of Immigration found the means after a request on Right to Know - See https://www.righttoknow.org.au/request/foi_request_for_detail_incident_153#incoming-1890 for details).

It is for the above reasons (and my earlier submission to the charges notification) that I contend that the charges should be reduced or not imposed.'

8. On 15 April 2015, the department provided you with an internal review decision that affirmed that the charges payable for FOI request 12159 was \$16.05. 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 12159. 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 15 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 substituted internal review decision, or wish to discuss, please contact FOI.Legal.Team@humanservices.gov.au, citing LEX 12814.

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