



1 August 2022

Ms Jane Seaborn  
Right to Know

Email: [foi+request-9132-9d349267@righttoknow.org.au](mailto:foi+request-9132-9d349267@righttoknow.org.au)

Dear Ms Seaborn,

**Freedom of Information**  
**FOI Reference number: 22/23 - 2**

I refer to your email received by the Fair Work Commission (**the Commission**) on 15 July 2022, in which you requested access to the following documents under the *Freedom of Information Act 1982 (FOI Act)*:

*'Documents, emails, file notes and other communications and records relating to all complaints made about former Fair Work Commissioner Barbara Deegan, and details of the resulting investigations by the FWC and any independent investigations into Ms Deegan's conduct during her entire employment (of some 18 years) with the FWC.'*

I am writing to advise you of my decision under regulation 8 of the *Freedom of Information (Charges) Regulations 2019 (Charges Regulations)* that you are liable to pay a charge in respect of the processing of your request. I am an officer authorised under section 23 of the FOI Act to make decisions in relation to FOI requests.

**Preliminary assessment of charge**

In accordance with the Charges Regulations and section 29 of the FOI Act, my preliminary assessment of the charge you are liable to pay is \$1462. I have assessed the work the Commission would need to do to process your request and have calculated the following breakdown:

Estimated length of documents	
Number of pages	420

PROCESSING CHARGES		
<b>A. Search and retrieval</b>		
Task	Time	Cost @ \$15/hr
Search and retrieval of documents	11.5 hours	\$172
<b>B. Decision making</b>		
Task	Time	Cost @ \$20/hr
Examination of pages for decision making (5 minutes per page, 420 pages)	35 hours	\$700
Exempted pages (5 minutes extra per page to cover additional consideration of complexity of material and	12.5 hours	\$250

elements of exemption claims, estimated to cover 150 pages).		
Consultation with third parties	10 hours	\$200
Preparation of documents for release including redacting exempt or irrelevant material	4 hours	\$80
Preparation of decision letter	4 hours	\$80
Preparation of schedule of documents	4 hours	\$80
<b><i>Decision making subtotal (before deduction of 5 hours)</i></b>	<b>69.5hours</b>	<b>\$1390</b>
<b><i>Decision making subtotal (after deduction of first 5 hours free)</i></b>	<b>64.5 hours</b>	<b>\$1290</b>

<b>ESTIMATED TOTALS AND DEPOSIT</b>	
<b><i>ESTIMATED TOTAL (total of A and B)</i></b>	<b>\$1462</b>
<b><i>REQUIRED DEPOSIT</i></b>	<b>\$365.50</b>

### Your right to contend the charge

Under section 29 of the FOI Act, you have the right to contend that the charge:

- has been wrongly assessed, or
- should be reduced, or
- should not be imposed.

If you make a contention, then in deciding whether to reduce or not impose the charge, the decision maker in our agency must take into account:

- whether payment of the charge, or part of it, would cause you financial hardship, and
- whether giving access to the documents is in the general public interest or in the interest of a substantial section of the public.

### Payment of a deposit

Pursuant to regulation 12 of the Charges Regulations, I have decided that you need to pay a deposit. As the charge exceeds \$100, the deposit is 25% of the charge (\$365.50) . The deposit is not refundable (even if I decide not to give you access to some or all of the documents) except if:

- you contend that the charge has been wrongly assessed or should be reduced or not imposed, and the Commission decides under section 29 of the FOI Act not to impose the charge (regulation 12 of the Charges Regulations), or
- the Commission fails to make a decision on your request within the statutory time limit (regulation 7 of the Charges Regulations), or
- the final charge is less than the deposit paid, in which case the excess will be refunded (regulation 12 of the Charges Regulations).

You can pay the deposit by bank transfer to:

Account Name: FWC Official Departmental Receipts Account

BSB: 093-003

Account Number: 110440

## Required action

You have 30 days to respond in writing to this notice. The due date for a response is 31 August 2022. By that date, you must do one of the following things in writing:

- agree to pay the charge (pursuant to section 11A(1) of the FOI Act and regulation 11(1) of the Charges Regulations, you will not be entitled to access the documents until you pay the full charge); or
- contend that the charge has been wrongly assessed, or should be reduced or not imposed. You will need to explain your reasons; or
- withdraw your request.

Please send your response using the email or postal details below:

FOI and Privacy Officer  
Fair Work Commission  
Email: [xxx@xxx.xxx.xx](mailto:xxx@xxx.xxx.xx)

Postal address:  
GPO Box 1994  
Melbourne VIC 3001

If you do not provide a written response in accordance with one of the three options above by 31 August 2022 your request will be taken to have been withdrawn.

## Time limits for processing your request

Pursuant to section 31 of the FOI Act, the time limit for processing your FOI request is suspended, starting on the date you receive this notice and ending on the earlier of:

- (a) the day you pay the charge (in full or the required deposit); or
- (b) if applicable, the day the Commission notifies you of its decision not to impose the charge.

Relevant provisions of the FOI Act are set out in **Attachment 1**.

More information about charges under the FOI Act is available on the Office of the Australian Information Commissioner's website: [What charges may apply? - Home \(oaic.gov.au\)](#), [Calculating and imposing charges for FOI access requests](#), and in part 4 of the Australian Information Commissioner's FOI guidelines: [Part 4 — Charges for providing access - Home \(oaic.gov.au\)](#).

Please contact me if you would like to discuss this matter.

Yours Sincerely

Tracey  
FOI and Privacy Officer  
Legal Services  
Fair Work Commission

## Attachment 1 - Relevant Provisions of the FOI Act

### 11A Access to documents on request

#### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

...

#### *Mandatory access—general rule*

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

...

### 29 Charges

- (1) Where, under the regulations, an agency or Minister decides that an applicant is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document, the agency or Minister must give to the applicant a written notice stating:
  - (a) that the applicant is liable to pay a charge; and
  - (b) the agency's or Minister's preliminary assessment of the amount of the charge, and the basis on which the assessment is made; and
  - (c) that the applicant may contend that the charge has been wrongly assessed, or should be reduced or not imposed; and
  - (d) the matters that the agency or Minister must take into account under subsection (5) in deciding whether or not to reduce, or not impose, the charge; and
  - (e) the amount of any deposit that the agency or Minister has determined, under the regulations, that the applicant will be required to pay if the charge is imposed; and
  - (f) that the applicant must, within the period of 30 days, or such further period as the agency or Minister allows, after the notice was given, notify the agency or Minister in writing:
    - (i) of the applicant's agreement to pay the charge; or
    - (ii) if the applicant contends that the charge has been wrongly assessed, or should be reduced or not imposed, or both—that the applicant so contends, giving the applicant's reasons for so contending; or
    - (iii) that the applicant withdraws the request for access to the document concerned; and
  - (g) that if the applicant fails to give the agency or Minister such a notice within that period or further period, the request for access to the document will be taken to have been withdrawn.

- (2) If the applicant fails to notify the agency or Minister in a manner mentioned in paragraph (1)(f) within the period or further period mentioned in that paragraph, the applicant is to be taken to have withdrawn the request for access to the document concerned.
- (3) An agency or Minister must not impose a charge in respect of a request for access to a document, or the provision of access to a document, until:
  - (a) the applicant has notified the agency or Minister in a manner mentioned in paragraph (1)(f); or
  - (b) the end of the period or further period mentioned in that paragraph.
- (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 to impose the charge, the agency or Minister 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.
- (6) If the applicant has notified the agency or Minister in the manner mentioned in subparagraph (1)(f)(ii), the agency or Minister must take all reasonable steps to enable the applicant to be notified of the decision on the amount of charge payable as soon as practicable but in any case no later than 30 days after the day on which the applicant so notified the agency or Minister.
- (7) If:
  - (a) that period of 30 days has elapsed since the day on which the agency or Minister was so notified; and
  - (b) the applicant has not received notice of a decision on the amount of charge payable;
 the principal officer of the agency, or the Minister, as the case requires, is, for all purposes of this Act, taken to have made, on the last day of the period, a decision to the effect that the amount of charge payable is the amount equal to the agency's or Minister's preliminary assessment of the amount of the charge mentioned in paragraph (1)(b).
- (8) If:
  - (a) the applicant makes a contention about a charge as mentioned in subsection (4); and
  - (b) the agency or Minister makes a decision to reject the contention, in whole or in part;
 the agency or Minister, as the case requires, must give the applicant written notice of the decision and of the reasons for the decision.

Note: Section 25D of the Acts Interpretation Act 1901 sets out rules about the contents of a statement of reasons.

- (9) A notice under subsection (8) must also state the name and designation of the person making the decision and give the applicant appropriate information about:
  - (a) his or her rights with respect to review of the decision; and
  - (b) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
  - (c) the procedure for the exercise of those rights;
 including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.

- (10) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (8).
- (11) A notice under subsection (8) is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

### **31 Decision to impose charge—extended period for processing request**

#### *Scope*

- (1) This section applies if:
  - (a) on a particular day (the **charge notice day**) an applicant in relation to a request receives a notice under subsection 29(1) or (6) to the effect that the applicant is liable to pay a charge in respect of the request; and
  - (b) the notice is received before the end of the period (the **processing period**) applicable under paragraph 15(5)(b) in relation to the request (or that period as extended).

#### *Processing period to be calculated disregarding period when charge unpaid*

- (2) In working out the length of the processing period (or that period as extended) for the purposes of paragraph 15(5)(b), disregard the number of days in the period starting on the charge notice day and ending on the earliest occurring of the following days:
  - (a) the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations), whether or not the decision to impose the charge has been considered under section 29, or is the subject of a review under this Act;
  - (b) if the amount of the charge is changed under section 29, or following a review under this Act—the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations) as changed following the review;
  - (c) if, under section 29, or following a review under this Act, a decision is made with the effect that the charge is not imposed—the day the applicant is notified of the decision.