



8 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 – Notice of Internal Review Decision on Charges

1. I refer to your correspondence, dated 9 March 2015 and received by the Department of Human Services (the **department**) on the same date, in which you requested internal review of the department's decision to waive the processing charge 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**). As you have requested an internal review, 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.'

Decision

8. I have decided, under section 54C and subsection 29(8) of the FOI Act, to affirm the decision to impose a charge.
9. You are therefore liable to pay the processing charge of \$24.35.

Material on which my findings of fact are based

10. I based my findings of fact on the following material:
 - the letter of the department notifying you of the preliminary assessment of the charge, dated 16 February 2015;
 - your correspondence seeking non-imposition of the charge, dated 16 February 2015;
 - your correspondence seeking internal review of the department's decision to waive the preliminary assessment of the charge by dated 9 March 2015;
 - the content of the documents to which you have sought access;
 - the relevant provisions of the FOI Act;
 - the *Freedom of Information (Charges) Regulations 1982* (the **Regulations**); and
 - the Freedom of Information Guidelines (the **Guidelines**) made under section 93A of the FOI Act by the Office of the Australian Information Commissioner (the **OAIC**).

Reasons for decision

Relevant FOI legislation

11. Subsection 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.
12. Subsection 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.

13. Subsection 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

14. On review of the documents falling within the scope of your request, I confirm that the department's Customer First Branch has identified four documents (totalling 46 pages) as falling within the scope of your FOI request.
15. I note that the preliminary estimate of the charge in the amount of \$24.35 was calculated on the basis of these documents.

Waiver or reduction of the charge

16. I am not satisfied that the department should reduce, or waive, the charges imposed for FOI request 12236, on the following basis:

- you have not provided sufficient evidence of financial hardship;
- the documents would not be in the general public interest to release, as they do not assist the department to make administrative decisions and therefore do not affect members of the public; and
- you have not put forward other relevant considerations that sufficiently weigh in favour of reducing, or waiving, the charges.

➤ *Financial hardship*

17. You have submitted that the additional costs associated with obtaining a cheque, or a money order, are an unreasonable burden on the Australian public. However, I do not consider that you have claimed that the payment of the charge, or part of it, would cause financial hardship to you personally.
18. The decision to reduce, or not impose a processing charge on the grounds of financial hardship, requires consideration of the applicant's specific financial circumstances and the amount of the estimated charge. Financial hardship must be more than an applicant having to meet a charge from his or her own resources, and be more than an applicant discussing the burden of charges to applicants generally, to result in a reduction or non-imposition of a processing charge.
19. Applicants are generally required to provide some evidence of the financial hardship, that they personally will experience, such as receipt of a pension or income support payment, or provide evidence of income, debts or assets. You have not provided this evidence. Consequently, I am satisfied that payment of the charge in the amount of \$24.35 would not cause you financial hardship.

➤ *Public interest*

20. In making my decision, I am also required under subsection 29(5) of the Act to take into account 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 document or documents in question. This requires me to consider the nature of the documents and the context of their release.

21. Public interest factors in favour of reducing or waiving a charge are:

- the level of public interest in the documents;
- the general public interest in allowing access to information (including government policy) under the FOI Act;
- the general public interest in openness of administration; and
- promoting the objects of the FOI Act, including:
 - increasing scrutiny, discussion, comment and review of Government activities;
 - facilitating and promoting public access to information, promptly and at the lowest reasonable cost; and
 - informing the public on matters of public importance or interest, and assisting participation in debate or discussion.

22. I am not satisfied that you have provided me with compelling reasons in favour of reducing, or waiving, the charges. Further, the documents do not contain administrative information as they contain material that is related to the internal operations of the department. 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.

23. For similar reasons, I am also satisfied that the charges imposed should not be reduced, or waived, because the documents promote the objects of the FOI Act (outlined in section 3 of the FOI Act) as the documents would not provide further insight into the administration of the programs and payments that the department delivers on behalf of policy departments. Consequently, I do not consider that there would be a benefit flowing to the general public, or a substantial section of the public, sufficient enough to justify the release of the documents at a reduced or nil charge.

Other considerations

24. In your correspondence, dated 9 March 2015, you contended the following:

- the additional costs incurred in obtaining a cheque or a money order, to pay the charges imposed for FOI request 12236, are an unreasonable burden as the department has not offered you an EFTPOS option and you consider that the department is attempting to make it as difficult as possible for applicants to pay charges; and
- the department has electronic payment methods in place for customers who are repaying monies owed to the Commonwealth and the department not accepting EFTPOS payments from FOI applicants is inconsistent with the objects of the FOI Act.

25. Nowhere in the FOI Act or the Guidelines stipulates which methods of payment must be offered to FOI applicants. Rather, subsection 3(4) of the FOI Act states that charges must be imposed at the lowest reasonable cost. Consequently, it is immaterial that the

department has other payment options available to customers for alternate purposes, principally the department's service delivery operations. EFPTOS transactions are offered to customers in relation to the administration of social security, medicare-related and child support payments. This is the department's primary service delivery function. Charges imposed for FOI requests contribute to the department processing FOI requests for non-personal information, which is ancillary to the department's service delivery operations.

26. Based on the department's current FOI procedures, which employ a consistent method for calculating the charges associated with non-personal FOI requests and offer consistent methods of payment of these charges, the method of calculating the charges for FOI request 12236 has fairly and accurately reflected the amount of work involved in processing your request for non-personal information.
27. In deciding whether charges should be reduced or waived, I have also taken into consideration:
 - the cost to the department, including staff and other resources, in processing the FOI request; and
 - the impact of diverting staff resources to process the FOI request on the department's other operations at a time when the department is under significant pressure to deliver the Government's priorities and programs.
28. 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.
29. In the letter dated 5 March 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 payments for FOI requests 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.
30. Further, the department's methods for paying charges associated with FOI requests are consistent with those used by other Commonwealth agencies, such as the Australian Federal Police's FOI area.
31. On this basis, I am not persuaded by your argument 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

32. For the reasons above, I consider that the charges imposed for FOI Request 12236 should remain at \$24.35 and no reduction or waiver.
33. No further action on the request will be undertaken until the charges imposed for FOI request 12236 have been received by the department. After this has occurred, the department will be in a position to continue processing your FOI request.

Appeal Rights and further contact

34. 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**).
35. 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 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