



15 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 – Notice of Internal Review Decision on Charges

1. I refer to your correspondence, dated 16 March 2015 and received by the Department of Human Services (the **department**) on the same date, in which you requested an internal review of the department's decision not to waive, or reduce, the processing charge 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**). As you have requested an internal review, 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#incomin-g-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.'

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 \$16.05

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, in relation to FOI request 12159, dated 24 February 2015;
 - your correspondence seeking non-imposition of the charge, dated 25 February 2015;
 - the department's decision to impose the preliminary assessment of the charge, in relation to FOI request 12159, dated 16 February 2015;
 - your correspondence seeking an internal review of the department's decision to impose the preliminary assessment of the charge, dated 16 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 Cyber Security Branch has identified three documents (totalling 18 pages) as falling within the scope of your FOI request.
15. I note that the preliminary estimate of the charge in the amount of \$16.05 was calculated on the basis of the search and retrieval time involved for these 18 pages (estimated at 1.07 hours, at \$15.00 per hour), and the decision-making time estimated for this matter – after the deduction of 5 hours (4.79 hours at \$20.00 per hour).
16. Based on the documents that the department has in its possession, in relation to your FOI request, I am satisfied that these estimates of the search and retrieval time, and decision-making time, accurately reflect the work involved in processing it.

Waiver or reduction of the charge

17. I am not satisfied that the department should reduce, or waive, the charges imposed for FOI request 12159, 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*

18. In your correspondence, dated 25 February 2015, you submitted that the additional costs associated with obtaining a cheque, or a money order, is an unreasonable burden

in general terms. 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.

19. 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.
20. 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 \$16.05 would not cause you financial hardship.

➤ Public interest

21. 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.
22. 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.

23. I am not satisfied that you have provided me with compelling reasons in favour of reducing, or waiving, the charges.

- **Publication of information on the department's IPS**

24. You have contended that you disagree with paragraphs 21 to 23 of the charges decision, notified to you on 16 March 2015.

25. The documents do not contain administrative information as they contain material that is related to the department's policies and guides on the use of SecureMail. The department's use of Secure Mail facilities is separate to administrative decision-making. The material does not provide further insight into the department's primary service delivery functions or powers, nor does it shed light on administrative decisions or

recommendations affecting members of the public. Therefore, I am satisfied that the documents, within scope, do not satisfy the requirements of operational information for the purposes of subsection 8A(1) of the FOI Act.

26. I note that you have referred to the Guidelines, which provide that information should be released under the IPS if it is “the agency’s operational information, which is information that assists the agency to exercise its functions or powers in making decisions or recommendations that affect members of the public. This includes the agency’s rules, guidelines, practices and precedents relating to those decisions and recommendations.”
27. I also note that paragraph 13.86 of the Guidelines provides that the publication of operational information is important in its own right, but is necessary also to ensure that members of the public are not disadvantaged through lack of awareness of the information used by agencies in decision-making.
28. I am not satisfied that members of the Australian public are disadvantaged by the release of the documents, within scope, at a charge. As detailed at paragraph 23 of the charges decision letter, 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. Rather, the documents relate to the department’s secure email systems used to transmit correspondence bearing Protective Markings, as per the Australian Government’s Protective Security Policy Framework.
29. You have also stated that the department’s use of SecureMail facilities to communicate with members of the public impedes the ability of others to see public requests for information, and the use of SecureMail facilities is a “function in making decisions or recommendations that affect members of the public.”
30. The department publishes operational information on its IPS. It also publishes a list of documents released and summaries, in relation to FOI requests for non-personal information, on the department’s FOI disclosure log. These documents are available, upon request. Furthermore, statistical information and data can be requested by emailing statistics@humanservices.gov.au.
31. Given these avenues, I am not persuaded by your argument that the department using SecureMail to communicate with applicants making information requests, disadvantages members of the public and therefore there is no public interest in release of the documents.
32. Further, the department’s SecureMail facilities are predominantly used for the purposes of internal communication and communication with other Commonwealth agencies and/or third party organisations that are involved in Commonwealth work. While members of the public do have a degree of interaction with the department’s SecureMail facilities, I do not consider that this group of persons is substantial enough to satisfy the public interest test of a benefit flowing generally to the public, or a substantial section of the public, from the disclosure of the documents in question.
33. Similarly, I am also satisfied that the charge imposed for FOI request 12159 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

34. In your correspondence, dated 25 February 2015 and 16 March 2015, you also contended that the charge imposed for FOI request 12159 is excessive, and should not be imposed, for the following reasons:
- the requirement for the payment of the charge by money order or cheque is an unreasonable burden;
 - the department has electronic payment methods in place for customers and the department not accepting EFTPOS/BPay payments from FOI applicants is inconsistent with the objects of the FOI Act; and
 - you disagree with paragraph 24 to 26 of the charges decision, notified to you on 16 March 2015.
35. 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.
36. 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.
37. 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.
38. 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.
39. In the letter to you, dated 16 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. Again, 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.

40. I acknowledge that other Commonwealth agencies have utilised EFTPOS and/or BPay payment options for FOI requests. I also acknowledge that EFTPOS and/or BPAY payment options involve the assignment of a unique reference number for particular transfers. However, it is the department's current policy to only offer FOI applicants the option of paying for charges, in relation to the processing of their requests, by cheque or money order. To do otherwise, would be in contravention of this policy.
41. I note your arguments regarding the technical advantages of using electronic payment facilities, for the purposes of paying the charge imposed for your FOI request. However, the majority of the FOI requests that the department receives are of a personal nature, which we do not impose charges for. The department does not collect charges for FOI requests frequently enough to justify the arrangement of a separate bank account for FOI requests, or require departmental officers to separate EFTPOS/BPay transactions for FOI. To do so, would substantially divert the department's resources from its primary service delivery objectives.
42. 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.
43. 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

44. For the reasons above, I consider that the charges imposed for FOI Request 12159 should remain at \$16.05 and no reduction or waiver will be granted to you.
45. No further action on the request will be undertaken until the charges imposed for FOI request 12159 have been received by the department. After this has occurred, the department will continue processing your FOI request.

Appeal Rights and further contact

46. 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**).
47. If you have any questions about this 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