



Australian Government

Department of Finance

Reference: FOI15/15
Contact: FOI Team
Telephone: (02) 6215 1783
e-mail: foi@finance.gov.au

Ms Evelyn Doyle
Right to Know

via email: foi+request-920-bdb2a39a@righttoknow.org.au

Dear Ms Doyle,

Freedom of Information Request – FOI15/15

Thank you for your email to the Department of Finance (Finance) in which you sought access to the following under the *Freedom of Information Act 1982* (FOI Act).

I understand Australia has not yet joined the OGP however Finance's own Estimates Brief on this states the National Action Plan will be completed by December 2014.

I am happy to have the document in draft format if it is not yet completed. I imagine that public consultation would take place prior to signing the agreement and as such I am happy to proceed with my request for the drafted version, in preparation for that process.

I would also like to add another component to my FOI request. Could I also request the most recent ministerial brief on the OGP (but not including the Senate Estimates - Hot Issue Brief already released under FOI).

Initial Charges Estimate

On 3 March 2015, Finance notified you that you are liable to pay a charge for processing your request and that the preliminary assessment of that charge is 17.15.

Contention of the charges

In an email dated 3 March 2015, you outlined your contention of my initial estimate of charges (\$17.15). You sought waiver of the charges and made the following submissions:

Under Section 29 of the FOI Act I request a waiver of fees in the public interest and query the 4.4 hours decision making time.

Australia was asked to join the OGP in 2011. A commitment to OGP has implications for transparency and accountability of which are in the public interest. Many people see these factors as crucial to deterring corruption in a democratic society, as well as enabling citizens to engage more fully in the process. Transparency means voters are

equipped with all the relevant information before casting a vote on who best to represent them.

The OAIC lists reasons why FOI is important as follows:

"FOI enhances the transparency of policy making, administrative decision making and government service delivery.";

"A community that is better informed can participate more effectively in the nation's democratic processes."; and

"...there is greater recognition that information gathered by government at public expense is a national resource and should be available more widely to the public. This idea was explicitly recognised through the reforms to the FOI Act in 2010 and the creation of the information policy function of the Office of the Australian Information Commissioner (OAIC)."

In consideration of these principles, I believe my request certainly fulfills the public interest test about where the Australian Government stands at the moment on consideration of joining the OGP.

Secondly, I would also contest the calculation of 4.4 hours decision making time. I do not believe this cost is one that should be borne by myself (the applicant). This is a simple request, there are no national security, confidentiality or privacy factors that would indicate this level of time to make a decision to release the two relevant documents. I feel strongly that I should not be financially penalised for the department's delay in coming to a decision on this simple request.

In accordance with subsections 29(8) and 29(9) of the FOI Act, this letter is a written notice of the reasons for my decision to reject your contention in full and an outline of your rights with respect to review of this decision.

Decision on waiver of charges

I confirm that I am an authorised officer for the purpose of subsection 23(1) of the FOI Act.

I have considered your request on its merits. In accordance with section 29 of the FOI Act, I have decided not to waive the charges.

Consideration of contention

In deciding whether to exercise the broad discretion in subsection 29(4), to reduce or not impose a charge, I may consider any relevant matter. However, subsection 29(5) provides that I must consider whether giving access to the documents in question is in the general public interest, or in the interest of a substantial section of the public; and whether the charge would cause financial hardship.

In considering whether charges should be waived, I have had regard to the following:

- the terms of your FOI request;
- the submissions set out in your email of 3 March 2015;
- the content of the documents that fall within the scope of that request;
- the relevant provisions of the FOI Act, including the aims and objectives;

- FOI Guidelines and IC Review decisions, as issued by the Office of the Australian Information Commissioner (OAIC).

Legislation

Subsection 29(5) of the FOI Act provides:

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.*

In addition, any other relevant matter may be considered, including those matters set out in your submissions.

Financial hardship

Although I am obliged to consider whether payment of the charges would cause financial hardship, as you had not provided any contentions and evidence that this may be the case, I have not considered this factor any further.

Public Interest

The threshold requirement is to identify the benefit that would flow from disclosure of the documents to the public or a substantial section of the public. The test is different to the question of whether it is in the public interest for access to be granted to the documents as set out in the conditional exemptions (see further discussion below).

Section 29(5)(b) requires me to consider ‘whether the giving of access to the documents in question is in the general public interest or in the interest of a substantial section of the public’. I have considered your submissions as outlined above.

A non-exhaustive list of examples of what may constitute ‘public interest’ for the purposes of paragraph 29(5)(b) of the FOI Act is set out at paragraph 4.58 of the FOI Guidelines. In my view the following are relevant in this case:

- *The document relates to a matter of public debate, or a policy issue under discussion within an agency, and disclosure of the document would assist public comment on or participation in the debate or discussion*

I note that paragraph 4.55 of the OAIC Guidelines provides that when identifying the ‘substantial section of the public’ that would benefit from disclosure, this may require consideration of both the content of the documents requested and the context in which their public release would occur.

While I acknowledge that the documents may in some way add to the information about delegation schedules within the public arena, it is a reasonable expectation that there would be limited benefit that would flow from release of the documents due to the content and context of the documents. Finance has already published a large number of documents on

open government. I consider that the requested documents would not be fulfilling the needs of a substantial section of the public any more than the significant amount of information that is already publicly available. In addition, processing your request diverts staff from their duties in making such information available.

The FOI Guidelines indicate it is open to an agency or minister to impose a charge even though a public interest purpose for disclosure has been established.

I am not persuaded that a case for waiver, on the grounds of public interest, has been demonstrated.

Charges for decision making

I note that in your email dated 3 March 2015, you stated that the charges for the 4.4 hours of decision making time should not be borne by you. I confirmed that the estimate of charges has included the five hours of decision making time free of charge. This means that you are not charged for any decision making time.

The public interest test for conditional exemptions

The public interest test for waiver under subsection 29(5) of the FOI Act differs from the public interest test in section 11B of the FOI Act. The fact that giving access would be in the public interest for the purposes of reducing or imposing a charge under section 29 does not mean that giving access to those same, conditionally exempt documents, cannot be, on balance, contrary to the public interest.

No decision on access has been made at this stage.

Liability to pay a charge

My affirmed assessment of the charge to process this request is as follows:

| Task | Rate | Units | Charge |
|--------------------------------|---------------|--------------|-----------------|
| Search & retrieval | \$15 per hour | 1.12 hours | \$ 16.75 |
| Decision-making | \$20 per hour | 4.4 hours | \$ 88.00 |
| <i>less first 5 hours free</i> | | 5 hours | \$ -100.00 |
| Photocopies | 0.10 per page | 4 pages | \$ 0.40 |
| TOTAL | | | \$ 17.15 |

In accordance with the *Freedom of Information (Charges) Regulations 1982* (Charges Regulations), this estimate has included five hours of decision making time free of charge.

You can agree to pay the charge. If you agree, processing of your request will resume as soon as the department receives a payment, either in full or a deposit.

Payment in full is \$17.15. Payment in full entitles you to receive a decision in relation to your request, a schedule which lists the documents relevant to your request, and any documents released.

Your cheque/money order should be made payable to the Collector of Public Monies and addressed to:

FOI Coordinator
Legal Services Branch
Department of Finance
John Gorton Building
King Edward Terrace
PARKES ACT 2600

If you wish to pay by credit card, you should forward a letter which sets out the credit card details and authorises the department to charge that amount to the card. Please note that the department only accepts Mastercard and Visa.

Consistent with paragraph 29(1)(f) of the FOI Act, within 30 days of the date of this notice, you need to either:

- agree to pay the charge indicated above and forward the deposit; or
- withdraw your request; or
- exercise your review rights.

If you fail to notify this department in a manner described above within 30 days of the date on this notice, it will be taken that you have withdrawn your request.

Please note that should you forward a deposit in accordance with section 29 of the FOI Act, you will then accept liability for settlement of the debt with the department upon completion of processing the FOI request. The outstanding charge amount is a debt created in favour of the Commonwealth and therefore, Finance is obliged to pursue recovery of the debt in accordance with the *Public Governance, Performance and Accountability Act 2013*.

Processing Time

In relation to the preliminary assessment of charges, in accordance with section 31 of the FOI Act, the time period for processing your request is suspended from the date of this notice and resumes on either day you pay the deposit or the day on which Finance makes a decision not to impose a charge.

Publication

The FOI Act requires Commonwealth agencies to publish:

- information in documents to which the agency routinely gives access in response to FOI requests except where that information is exempt under the FOI Act; and
- information in documents released under the FOI Act.

Subject to certain exceptions, any documents provided to you under the FOI Act will be published on Finance's FOI Disclosure Log (www.finance.gov.au) as soon as possible. Finance's policy is to publish the documents within one working day after they are released to you.

Policy to exclude junior departmental officer contact details

Finance has adopted a policy to generally exclude the names and contact details (telephone number and email address) of junior staff (non-SES officers) from any documents released under FOI. Finance's preference is to reach agreement with FOI applicants to exclude junior officers' names and direct contact details (telephone and email address) from the scope of the request.

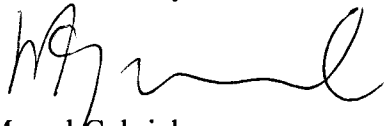
Where there is no objection, the names and contact details of junior officers are redacted under section 22 of the FOI Act, on the basis that these details are irrelevant to the request. If an objection is raised then consideration would be given to the disclosure of names and contact details in light of the relevant provisions of the FOI Act. Consultation with individual junior officers may need to be undertaken in such circumstances.

Review and Appeal Rights

You are entitled to request an internal review of my decision not to waive the charges. Your appeal rights are set out in Attachment A as prescribed by 29(9) of the FOI Act.

Please contact the FOI Team on the above contact details if you wish to discuss your request.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Marcel Gabriel', with a stylized flourish at the end.

Marcel Gabriel
Acting Assistant Secretary
Online Services Branch
Department of Finance
16 March 2015



Australian Government
Department of Finance

Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why.

You can lodge your application in writing through one of the contact details provided at the end of this attachment.

Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

Do I have to go through Finance's internal review process first?

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. Review by the IC is currently free.

How do I apply?

You must apply for IC review in writing and you can lodge your application in one of the following ways:

Post: Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
Email: enquiries@oaic.gov.au
Fax: 02 9284 9666
In person: Level 3
175 Pitt Street
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website (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.

Making a complaint

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review.

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is \$861, although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the

complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

Post: Commonwealth Ombudsman
PO Box 442
CANBERRA ACT 2601
Phone: 02 6276 0111
1300 362 072

Finance FOI contact details

FOI Coordinator
Legal Services Branch
Department of Finance
John Gorton Building
King Edward Terrace
PARKES ACT 2600
Phone: 02 6215 1783
Email: foi@finance.gov.au
Website: www.finance.gov.au/foi/foi.html