

OFFICIAL



Australian Government
Department of Finance

Reference: FOI 22-23/09
Contact: FOI Team
e-mail: foi@finance.gov.au

C Drake
Right to know

By email only: foi+request-9861-4c972342@righttoknow.org.au

Dear Mr Drake,

Freedom of Information Request – FOI 22-23/09

On 28 January 2023, the Department of Finance (Finance) received your email, in which you sought access under the Commonwealth *Freedom of Information Act 1982* (FOI Act) to documents held by Finance. A copy of your request is at **Attachment A**.

Initial Charges Estimate

On 2 February 2023, Finance notified you of the \$151.50 preliminary assessment of the charges payable by you for Finance to process your request.

Contention of the charges

On 2 February 2023, you outlined your contention of the preliminary assessment charge and sought waiver of the charges. A copy of your contention is at **Attachment B**.

Authorised decision-maker

I am authorised by the Secretary of Finance to make decisions under the FOI Act.

Decision on waiver of charges

I have decided to affirm the preliminary charge assessment of \$151.50.

Consideration of contention

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

- the terms of your FOI request;

- the submissions set out in your contention of 2 February 2023;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act;
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC).

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.

Assessment of charge

In your contention you sought the ‘basis on which the assessment is made’. The FOI charges calculator that Finance uses to assist in estimating a charge for processing a FOI request, together with the data inputs relevant to this request, are at **Attachment C**.

I am satisfied that 12.58 hours of decision making time is reasonable in the circumstances of your request for the following reasons:

- The 3 documents identified as being relevant to your request have 66 pages that contains significant complex legal drafting that requires careful assessment.
- The documents relate to third parties who may reasonably seek to object to the disclosure of material as it relates to their businesses, which requires consultation.
- Given the complex legal drafting that relates to the activities of businesses, it is likely that a number of exemptions under the FOI Act will apply to exempt certain material from release.
- Drafting a decision letter requires careful consideration of the FOI Act, the FOI Guidelines, and relevant case law decisions from FOI review bodies.

I consider that the estimate of 12.58 hours of work, and the associated charges estimate of \$151.50 is a reasonable estimate of the time required to process your request.

Financial hardship

I am required to consider whether payment of the charges would cause you financial hardship. You have not provided any contentions or evidence that this may be the case, as such, I have not considered this factor any further.

Public Interest

Paragraph 29(5)(b) of the FOI Act 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’.

The FOI Guidelines at paragraph 4.109 has a non-exhaustive list of factors that may constitute ‘public interest’ for the purposes of charging under the FOI Act.

The documents relate to the standard contractual provisions in relation to the provision of services for the administration of .au and the .gov.au domain name registry, together with the standard steps required to be undertaken by Finance to consult with third parties.

I do not consider that the documents that you have requested relate to a matter of public debate, or to a policy issue under discussion, or that disclosure would assist the public to comment on, or participate in, the debate or discussion.

I have not identified any relevant public interest factors that warrant a reduction or waiver of the charge amount of \$151.50.

Legislative amendments and discouraging FOI requests

In your 2 February 2023 contention of charge email you stated:

It is my understanding that requests for the purposes of legislation amendments are exempt from charges. It is also my understanding that it is not lawful to impose charges for the purpose of discouraging FOI request - which is clearly the purpose in this instance.

The FOI Act does not contain any provisions that exempt certain subject matter from charges, such as amendments to legislation. Further, the charge imposed relates to the estimated amount of work required to be undertaken by Finance to process your FOI request, as set out in **Attachment C**.

Liability to pay a charge

Timeframe

Within 30 days of the date of this notice, you need to either:

- agree to pay the charge of \$151.50; or
- seek an internal review of this charges decision, or
- withdraw your request.

Notice must be provided to Finance in writing. If you fail to notify Finance in a manner described above within 30 days of the date on this notice, being on or before **2 April 2023**, it will be taken that you have withdrawn your request.

The time period for processing your request remains suspended from the date of this notice and resumes on either the day you pay the charges amount or the day on which Finance makes a decision not to impose a charge. However, the actual processing time would also be affected by third party consultation.

Payment of charges

You can agree to pay the charge. If you agree, processing of your request will resume as soon as Finance receives payment.

Payment is \$151.50. Payment entitles you to receive a decision in relation to your request and any documents released.

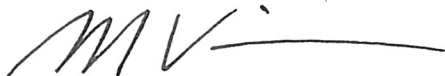
If you agree to pay the charge please notify the FOI team and they will prepare an invoice for you to complete, sign and return.

Review and Appeal Rights

You are entitled to request an internal review or an external review to the Office of the Australian Information Commission of my decision to impose a charge of \$151.50. Your review rights are set out in **Attachment D**.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'MV', followed by a horizontal line extending to the right.

Marc Vickers
Assistant Secretary
Governance and Procurement | Information and Communications Technology
Department of Finance
1 March 2023

From: [C Drake](#)
To: [FOI Requests](#)
Subject: Freedom of Information request - Proof of section 45 applicability used to refuse my FoI requests
Date: Saturday, 28 January 2023 1:23:58 AM

Dear Department of Finance,

Please disclose document(s) proving that on or before I made the first of my earlier FoI requests to your department, that all six (each item in (numbered) parentheses below) the following applied:

[5.159] To found an action for breach of confidence (which means section 45 would apply), the following five criteria must be satisfied in relation to the information:

- it must be specifically identified

(1) documents "specifically identifying" that the name of domains are confidential

- it must have the necessary quality of confidentiality

(2) documents proving the necessity that names of domains are confidential (keeping in mind that these are published on the public internet's DNS, whois, and other systems)

- it must have been communicated and received on the basis of a mutual understanding of confidence

(3) proof that there was an understanding of confidence in place at the time I made my FoI request, AND that it was mutual.

- it must have been disclosed or threatened to be disclosed, without authority

(4) proof that the above confidentiality criteria has been met.

- unauthorised disclosure of the information has or will cause detriment.

(5) documents proving that disclosure will cause detriment, even though (in this instance) it will be authorised (under the FoI act itself).

(6) Keeping in mind that I am requesting this information from your department, please provide documents identifying (by name or alternatively by role/position and organisation) the "person (other than an agency or the Commonwealth)" who would be found in "breach of confidence.", as per the wording of the act - which is:-

"A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence."

If any of the above do not exist or cannot be found, I will in the alternative accept the list of domains instead, as I originally requested in my prior FoI applications.

I am requesting the above information for the purposes of proposing FoI law amendments to prevent future public access to outsourced documents from being refused.

Yours faithfully,

C Drake

Please use this email address for all replies to this request:

xx@xxxxxxxxxxx.xxx.xx

Is xxx@xxxxxxxx.xxx.xx the wrong address for Freedom of Information requests to Department of Finance? If so, please contact us using this form:

https://www.righttoknow.org.au/change_request/new?body=finance

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:

<https://www.righttoknow.org.au/help/officers>

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an FOI officer, please ask your web manager to link to us from your

organisation's FOI page.

Be careful with this message

External email. Do not click links or open attachments unless you recognise the sender and know the content is safe.

From: [C Drake](#)
To: [FOI Requests](#)
Subject: Re: FOI 22-23/09 - Acknowledgement and preliminary charges notice [SEC=OFFICIAL]
Date: Thursday, 2 February 2023 5:21:39 PM

Dear FOI Requests,

It is my understanding that requests for the purposes of legislation amendments are exempt from charges. It is also my understanding that it is not lawful to impose charges for the purpose of discouraging FOI request - which is clearly the purpose in this instance.

That said - your charge notice fails to comply with the act. Please withdraw it, or correct it.

1(b). You have not provided "the basis on which the assessment is made" in respect of the extraordinary amount of "decision making time" you allege is required for documents which you state you have already retrieved.

1(d). Why you believe that revelation of these documents are not sufficiently in the public interest to warrant exemption from charges (taking into account 11B(4)).

and 1(e).

Yours sincerely,

C Drake

-----Original Message-----

SEC=OFFICIAL

Dear Mr Drake

Thank you for your email to the Department of Finance (Finance) requesting access to documents under the Freedom of Information Act 1982 (FOI Act). A copy of your request is attached.

Preliminary charges notice

Please also see attached a preliminary charges notice for your attention.

General FOI matters

Your request was received by Finance on 28 January 2023. The statutory period for processing your request commences from the day after Finance received your request and a decision was originally due on 27 February 2023. We note that the preliminary charges notice affects the processing timeframe.

The processing period may be extended if we need to consult third parties or for other reasons. We will advise you if this happens.

Publication

As required by the FOI Act, any documents provided to you under the FOI

Act will be published on our [1]disclosure log, unless an exemption applies or the documents are characterised as containing personal information. Documents will be published the next working day after they are released to you.

Policy to exclude junior officer contact details, signatures and mobile phone numbers

Finance has adopted a policy to generally exclude from any documents released under FOI, the names and contact details of junior staff (non-SES officers) and staff employed under the Members of Parliament (Staff) Act 1984 (adviser level and below). Finance has also adopted a policy to exclude signatures and mobile phone numbers from any documents released under FOI (unless publicly available). Finance's preference is to reach agreement with FOI applicants to exclude these details from the scope of the request. Where there is no objection, the names and contact details of junior officers, as well as any signatures and mobile phone numbers appearing in identified documents, will be redacted under section 22 of the FOI Act on the basis that these details are irrelevant to the request.

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

Kind regards

[2]cid:image001.jpg@01D20F6A.F1CA1B30

FOI Officer | Legal and Assurance Branch

Business Enabling Services

Department of Finance

A: One Canberra Avenue, Forrest ACT 2603

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References

Visible links

1. <https://www.finance.gov.au/about-us/freedom-information/disclosure-log/foi-foi-22/99>

Please use this email address for all replies to this request:

xx@xxxxxxxxxxxxx.xxx.xx

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:

<https://www.righttoknow.org.au/help/officers>

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

Be careful with this message

External email. Do not click links or open attachments unless you recognise the sender and know the content is safe.

FOI CHARGES ESTIMATE TOOL - SIMPLE

(insert data in shaded boxes only)

GENERAL DATA ESTIMATE

(terms in red are explained on the notes sheet)

| | | |
|---|-----|--------------------|
| Pages (approx) of material in scope | 66 | in A4 pages |
| Number of discrete relevant documents | 3 | |
| Percentage (approx) of pages to disclose in whole | 95% | |
| Percentage (approx) of pages requiring redaction | 5% | |
| Percentage (approx) of content that is applicant's own personal information | 0% | |
| Number of third parties to consult | 2 | |

PROCESS - search and retrieval

TIME per task **charge time:** **COST @ \$15 per hr**

| | | | |
|---|---|------|---------------|
| Time required to execute searches - enter hours (including part hours eg 0.5) | 0 | 0.00 | \$0.00 |
| Preparing schedules detailing all relevant documents (basic data entry eg doc no, date, description) - enter minutes per 10 documents | 0 | 0.00 | \$0.00 |
| <i>Search & Retrieval Subtotal</i> | | | \$0.00 |

PROCESS - decision-making

TIME per task **charge time:** **COST @ \$20 per hr**

| | | | |
|---|---|------|----------------------|
| Examine relevant pages for decision making - enter minutes per page | 3 | 3.30 | \$66.00 |
| Redacting pages that are partially disclosed - enter minutes per page | 5 | 0.28 | \$5.50 |
| Consult third parties - enter average per third party in hours | 2 | 4.00 | \$80.00 |
| Preparation and notification of decision | | | |
| Writing statement of reasons - enter hours | 5 | 5.00 | \$100.00 |
| Complete schedule by recording decision @ 4 documents per minute | | 0 | \$0.00 |
| <i>Decision-making Subtotal (before deduction of 5 hours)</i> | | | 12.58 \$251.50 |
| <i>Decision-making Subtotal (after deduction of first 5 hours free for all)</i> | | | 7.58 \$151.50 |

ACCESS - view / inspect

TIME per task **charge time:** **COST @ \$6.25 per 1/2 hr**

| | | | |
|--|--|------|----------------------------|
| Supervised inspection of documents - minutes per page | | 0.00 | 0.00 |
| Supervised inspection of audio/visual material - insert total duration of material in minutes then add 30 mins set-up and pack-up time | | 0.00 | 0.00 |
| <i>Inspection/Viewing Subtotal</i> | | | 0.00 0.00 \$0.00 |

ACCESS - copy and post

PAGES **COST @ 10c a page**

| | | |
|---|----|---------------|
| Photocopies of estimated released pages (including those with deletions) - set to 0 if providing electronically | 66 | \$0.00 |
| Electronic media (eg USB drive, CD-ROM) and/or postage - insert estimated cost of materials | | |
| <i>Access Subtotal</i> | | \$0.00 |

ESTIMATED TOTALS

| | | |
|--|----|-----------------|
| NUMBER OF RELEASED PAGES | | 66 |
| TIME (in hours) | | 7.58 |
| TOTAL COST | | \$151.50 |
| Financial hardship/public interest discount (as %) | 0% | \$0.00 |
| TOTAL COST (after discount) | | \$151.50 |



Australian Government

Department of Finance

Freedom of Information – Your Review Rights

If you disagree with a decision made by the Department of Finance (Finance) or the Minister for Finance (Minister) under the *Freedom of Information Act 1982* (the FOI Act) you can have the decision 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 the documents that has not been agreed to by Finance or the Minister, or if your application to have your personal information amended was not accepted. There are two ways you can seek a review of our decision: an internal review (IR) by Finance or the Minister, or an external review (ER) by the Australian Information Commissioner (IC).

Internal Review (IR)

If, Finance or the Minister (we/our), makes a Freedom of Information (FOI) decision that you disagree with, you can seek a review of the original decision. The review will be carried out by a different decision maker, usually someone at a more senior level.

You must apply for an IR within 30 calendar days of being notified of the decision or charge, unless we agree to extend your time. You should contact us if you wish to seek an extension.

We are required to make an IR decision within 30 calendar days of receiving your application. If we do not make an IR decision within this timeframe, then the original decision stands.

Review by the Australian Information Commissioner (IC)

The Office of the Australian Information Commissioner (OAIC) is an independent office who can undertake an ER of our decision under the FOI Act. The IC can review access refusal decisions, access grant decisions, refusals to extend the period for applying for an IR, and IR decisions.

If you are objecting to a decision to refuse access to a document, impose a charge, or a refusal to amend personal information, you must apply in writing to the IC within 60 calendar days of receiving our decision.

Third parties

If you are a third party objecting to a decision to grant someone else access to your information, you must apply to the IC within 30 calendar days of being notified of our decision to release your information. Further assistance is located [here](#).

Do I have to go through the internal review process?

No. You may apply directly to the OAIC for an ER by the IC.

If I apply for an internal review, do I lose the opportunity to apply for an external review?

No. You have the same ER rights of our IR decision as you do with our original decision. This means you can apply for an ER of the original decision or of the IR decision.

Do I have to pay for an internal review or external review?

No. Both the IR and ER are free.

How do I apply?

Internal review

To apply for an IR of the decision of either Finance or the Minister, you must send your review in writing. We both use the same contact details, and you must send your review request in writing.

In your written correspondence, please include the following:

- a statement that you are seeking a review of our decision;
- attach a copy of the decision you are seeking a review of; and
- state the reasons why you consider the original decision maker made the wrong decision.

Email: foi@finance.gov.au

Post: The FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603

External review (Information Commissioner Review)

For an ER, you must apply to the OAIC in writing. The OAIC ask that you commence a review by completing their online form [here](#).

Your application must include a copy of the notice of our decision that you are objecting to, and your contact details. You should also set out why you are objecting to the decision.

Email: FOIDR@oaic.gov.au

Post: Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

The IC's enquiries phone line is 1300 363 992.

Can I appeal the Information Commissioner's external review decision?

Yes. You can appeal the Information Commissioner's ER decision to the Administrative Appeals Tribunal (AAT).

There is a fee for lodging an AAT application (as at 12 October 2022 it is \$1,011).

Further information is accessible [here](#).

The AAT's number is 1800 228 333.

Complaints

Making a complaint to the Office of the Australian Information Commissioner

You may make a written complaint to the OAIC about actions taken by us in relation to your application.

Further information on lodging a complaint is accessible [here](#).

Investigation by the Commonwealth Ombudsman

The 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 with the IC 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. You will be notified in writing if your complaint is transferred.

Complaints to the Ombudsman should be made online [here](#).

The Ombudsman's number is 1300 362 072.