



# Australian Government

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## Civil Aviation Safety Authority

LEGAL, INTERNATIONAL AND REGULATORY AFFAIRS  
RMS Ref: F23/6839

23 March 2023

BS

Via email: [foi+request-9950-25cb69ac@righttoknow.org.au](mailto:foi+request-9950-25cb69ac@righttoknow.org.au)

Dear BS,

### **REQUEST FOR ACCESS UNDER THE *FREEDOM OF INFORMATION ACT 1982***

I refer to your email dated 18 February 2023 seeking access to documents under the *Freedom of Information Act 1982* (the Act). Your request was for:

*I kindly request the following information relating to Airservices Australia activities that are regulated by CASA:*

- Details of all surveillance activity for Sydney Tower and Sydney TCU between the dates 1st January 2022 and 17th February 2023, including any results (including safety observations, alerts, and findings).*
- Details of all enforcement activity related to the abovementioned surveillance.*
- A summary of any actions required by Airservices including whether they have been addressed or are outstanding.*

The date range of your access request is 1 January 2022 to 17 February 2023. You do not require the names of any CASA staff, or third parties contained in the documents.

On 15 March 2023, I made a decision to impose charges in the amount of \$707.29 in relation to your application.

On 15 March 2023, you emailed contending that the charge should be waived, as you suggested there was genuine public interest in these documents. You also sought clarification as to why such a high charge was applied. You requested I advise if a specific aspect of your request was attributing to such a high charge and that if that was the case you may consider limiting the request.

On 15 March 2023, I responded that as you were seeking documents that outline the status of any current findings as I previously explained this is not housed in any one document, I therefore included in scope all the emails between Air services and CASA outlining the actions taken regarding each finding. This volume of documents is what attributed to such a high charge. I informed outside of these documents the surveillance report covers most of the scope of your request (safety observations, alerts, and findings).

On 16 March 2023, you emailed responding '*I would like to limit my FOI request to the single document you have referred to. I trust this would remove all charges.*'

On 16 March 2023, I responded to your email, advising that although this does not remove all charges the charges had been drastically reduced as a result of you revising the scope of your request. At this time, I also provided a revised preliminary charges notice to you which outlined the new amount of \$23.45.



On 16 March 2023, you responded '*I contend that these charges should be waved. There is clearly a genuine public interest in the release of these files. The document you refer to outlines safety issues in the Australian aviation industry and refers directly to safety findings of the regulator at Australia's busiest airport. The information contained in the document could have wide-ranging safety impacts on every single flight, and every single passenger in and out of Sydney Airport.*'

## Section 29 (Charges) Decision

I have considered your submission for a fee waiver and the grounds for my decision are outlined below in accordance with section 25D of the *Acts Interpretation Act 1901* (Cth).

Section 29(5) of the Act explains:

*Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not 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.*

You have made a claim under subsection 29(5)(b) that access to the documents sought is in the public interest. Firstly, to make a decision that the charges are not imposed, I must be satisfied of both subsections 29(5)(a) and (5)(b).<sup>1</sup> In summary, it must be demonstrated (a) how the charge imposed would cause you financial hardship, and (b) that the documents within the scope of your access request contain matters in the public interest.

In relation to (a), for the purpose of subsection 29(5)(a), you have made no claim of financial hardship and therefore I have no information available to me to be satisfied payment of the charges would cause hardship.

In relation to (b), regarding subsection 29(5)(b), paragraph 4.107 of the *Office of the Australian Information Commissioner (OAIC) Freedom of Information Guidelines* explains—

*An applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that will benefit from this disclosure (s 29(1)(f)(ii)). This may require consideration of both the content of the documents requested and the context in which their public release would occur. Matters to be considered include whether the information in the documents is already publicly available, the nature and currency of the topic of public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents'.*

Considering paragraph 4.107, the three following pre-requisites must be satisfied for the grant of a fee waiver for subsection 29(5)(b):

- 1. the documents disclosed are not presently available to the public;*
- 2. the subject should be a matter of public interest or relate to decisions by government; and*
- 3. the release will facilitate access by the public generally, by a substantial section of the public, or by government and facilitate public debate or government decision-making.<sup>2</sup>*

I am satisfied of Item 1, that the information contained in the documents is not currently available through the public record. Regarding Item 2, although I maintain the subject is likely to be a matter of general public interest, it is undetermined whether this would be a substantial section of the public interest. To satisfy Item 3, I must be satisfied that disclosure to you would meet the statutory standard under the Act to 'benefit the general public or a substantial section of the

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<sup>1</sup> *Tennant and Australian Broadcasting Corporation* (2014) AATA 452, 13

<sup>2</sup> *Ibid* 21



public',<sup>3</sup> while fostering public debate and contributing to the government exercising its decision-making powers.<sup>4</sup> It is important to note that the public interest test is connected to members of a democratic society being sufficiently informed to enable them to contribute with influence to administrative decisions that may affect their affairs.<sup>5</sup> Disclosure to an individual in the absence of any context regarding the public release of the information is inconsistent with this purpose.

While you have contended that the documents sought are relevant to the public interest and you have explained your opinion as to why this would be the case, you have not provided context in which the document would be made public, and the way in which a public benefit may flow from the release of the document. On this basis, I do not consider I have adequate information to form a view that giving access to the documents would be in the general public interest or in the interest of a substantial section of the public.

Moreover, I note that the document sought contains business sensitive information of a third party. While I may consider it to be in the public interest to know of CASA's surveillance of third-party entities holding a delegated authority under the *Civil Aviation Act 1988* (Cth), I am not satisfied that there is a general public interest to have access to documents that disclose the business sensitive information of that third-party. Additionally, such a third party does not have a public duty to make their private affairs a public record.

Clarification of information regarding CASA's surveillance processes may be sought through CASA's Government and Parliamentary Services Section at [gps@casa.gov.au](mailto:gps@casa.gov.au).

Additionally, the fees imposed have been estimated at the lowest reasonable cost considering the business sensitivity of the document sought and that the document may be subject to exemptions under the Act. In addition, you have not made any contentions that the payment of the charge, or part of it, would cause financial hardship.

Consequently, I have made a decision to impose charges as you have not satisfied the requirements of sections 29(5)(a) and (b) of the Act. I have imposed charges in the amount of \$23.45 in relation to your application.

### **What you must do now**

Payment of \$23.45 (GST free) can be made by credit card by completing the attached form and sending back for processing.

Under section 31 of the Act, the time limit for processing your request will resume on the day you pay the charge.

### **Your rights of review**

If you disagree with CASA's decision to impose a charge or the amount of \$23.45, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision, namely internal review by CASA or external review by the Office of the Australian Information Commissioner (OAIC).

#### **Internal review**

You can ask CASA to review its decision to impose a charge and/or the preliminary assessment of the charge. There is no charge for internal review. You must apply within 30 days of being notified of the decision unless CASA extends the application time. You should contact CASA if you wish to seek an extension. CASA must make a review decision within 30 days. If it does not do so, its

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<sup>3</sup> Ibid 32

<sup>4</sup> Ibid 34

<sup>5</sup> *Attorney-General v Times Newspapers* (1974) AC 273, 320



original decision is considered to be affirmed. The review will be carried out by another CASA delegate. An application for review should be addressed to Freedom of Information at the address below:

Freedom of Information  
Advisory and Drafting Branch  
Legal, International and Regulatory Affairs Division  
Civil Aviation Safety Authority  
GPO Box 2005  
Canberra ACT 2601

### **Review by the Australian Information Commissioner**

You can ask the OAIC to review CASA's decision to impose a charge. The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the Act. You do not need to seek an internal review from CASA before seeking a review by the Information Commissioner.

The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

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

online: [https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)  
email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)  
post: Director of FOI Dispute Resolution, OAIC, GPO Box 5218, Sydney NSW 2001  
phone: 02 9284 9666

More information about Information Commissioner Review is available from <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Please do not hesitate to contact me if you have any questions in relation to your request.

Yours sincerely,



Keeley Phengrasmy  
A/g Freedom of Information Officer  
Advisory and Drafting Branch  
Legal, International and Regulatory Affairs Division  
Civil Aviation Safety Authority