



# Australian Government

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## Civil Aviation Safety Authority

LEGAL, INTERNATIONAL AND REGULATORY AFFAIRS

RMS Ref: F23/6839

30 March 2023

BS

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

Dear BS,

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

#### **Background**

On 18 February 2023, you sought access to documents under the *Freedom of Information Act 1982* (the Act), as follows:

*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 was 1 January 2022 to 17 February 2023.

On 15 March 2023, an officer of CASA 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 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, CASA responded that as you were seeking documents that outline the status of any current findings as previously explained this is not housed in any one document, therefore included in scope was all the emails between Air services and CASA outlining the actions taken regarding each finding. This volume of documents was what attributed to such a high charge. CASA informed outside of these documents the surveillance report covered 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, CASA responded to your email, advising that although this does not remove all charges, they had been drastically reduced as a result of revising the scope of your request. At this time, CASA 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**

By a decision dated 23 March 2023, you were advised:

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

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

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

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 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.

### **Application for internal review of decision**

By email of 23 March 2023, you sought internal review of CASA officer Phengrasmy's decision.

Section 29 of the Act states in part:

- (4) Where the applicant has notified the agency or Minister, in a manner mentioned in subparagraph (1)(f)(ii), that the applicant contends that the charge should be reduced or not imposed, the agency or Minister may decide that the charge is to be reduced or not to be imposed.
- (5) 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

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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

- (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 not contended that payment of the charge of \$23.45 would cause financial hardship to you and therefore I find that payment would not cause financial hardship, especially noting the small amount of the charge.

I have also considered 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 seek access to a recent CASA surveillance report of Airservices Australia in relation to its provision of air traffic control services at Sydney Airport. The report makes various compliance findings about such services. A substantial section of the public travel in aircraft to and from Sydney Airport and accordingly, I find that the giving of access to the document in question is in the interest of a substantial section of the public.

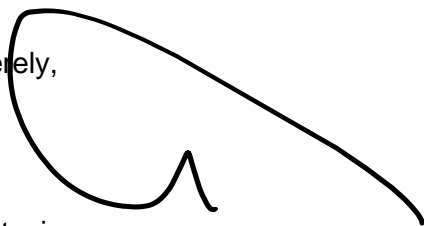
### **Internal review decision**

I have decided to waive the payment of the charge. Whilst I have found that payment would not cause financial hardship, I find that the giving of access to the surveillance report is in the interest of a substantial section of the public. I have also taken into account the small amount of the charge. CASA will now continue to process your request for access.

Please note that because I have made such a decision in this matter where you have not demonstrated financial hardship, it will not necessarily follow I would make the same decision on future requests for access to documents. I would consider all the evidence in each particular case.

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

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Adam Anastasi', written over the closing 'Yours sincerely,'.

Adam Anastasi  
Manager  
Advisory and Drafting Branch  
Legal, International and Regulatory Affairs Division

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