



11 May 2023

Arj S

BY EMAIL: foi+request-9989-75a200eb@righttoknow.org.au

In reply please quote:

FOI Request: FA 23/02/01635

File Number: FA 23/02/01635

Dear Arj S

Freedom of Information (FOI) request – Notice of charge decision under section 29(8) of FOI Act following applicant contention that charge be reduced or not imposed

On 25 February 2023, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

On 14 March 2023, the Department wrote to you to advise you that it has made a preliminary assessment that you were liable to pay a charge for the processing of this FOI request. On 13 April 2023, you requested the Department waive or reduce the charge.

The purpose of this letter is to provide the decision of the Department in response to your request for a waiver or reduction of charges.

1 Scope of request

You have requested access to the following:

I am requesting the following documents.

1. Key Briefs relating to Outcome 2 of Senate Estimates February 2023. Key Briefs relating to Outcome 3 of Senate Estimates February 2023.

In response to the Practical Refusal Notice dated 8 March 2023, you re-scoped the scope as follows:

Decision: I am seeking to revise my request to the following:

The key briefs relating to outcome 2 of the February Senate Estimate hearing, outcome 2 refers to: "Support a prosperous and united Australia through effective coordination and delivery of immigration and social cohesion policies and programs."

Please note the Outcome 2 key briefs for October Senate estimates hearing was released to the applicant on 30 January 2023 (File number FA 22/11/00795)

2 Preliminary notice of charges

On 14 March 2023, the Department wrote to you to advise you that it had made a preliminary assessment that you were liable to pay a charge of \$208.00 for the processing of this FOI request.

3 Request for waiver/reduction of charges

On 13 April 2023 you requested a waiver or reduction of the charges on the following grounds:

- public interest (section 29(5)(b) of the FOI Act).

Your reasons for requesting a waiver were as follows:

I refer to FOI request FA 23/02/01635 which was made on 25 February 2023. The Department contacted me on 14 March 2023 with an invoice for this FOI request.

Please note due to formatting issues, the correct AGLC4 citation could not be added and the document has included the case citation within the text for the relevant authorities.

I contest the charges are incorrect as the access to the documents is in the general public's interest or in the interest of a substantial section of the public. Section 29(1)(f)(ii) of the FOI Act 1982 (Cth) gives the power to contest such charges imposed by the agency or the Minister.

Documents Requested:

"The key briefs relating to outcome 2 of the February Senate Estimate hearing, outcome 2 refers to: "Support a prosperous and united Australia through effective coordination and delivery of immigration and social cohesion policies and programs."

Public Interest Tests

As outlined in the assessment notice provided by the Department on 14 March 2023, one of the grounds I could contest the charges imposed on this FOI request is the documents released is in general public's interest or in the interest of a substantial section of the public.

One of the main ways to assess public interest is to refer to the Freedom of Information Guidelines published by the Australian Information Commissioner (Wilson AM v Office of the Australian Information Commissioner 2023) Paragraph 6.5 of the Guidelines set out the general principles regarding what is in the public interest:

- *something that is of serious concern or benefit to the public, not merely of individual interest;*
- *not something of interest to the public, but in the interest of the public;*
- *not a static concept, where it lies in a particular matter will often depend on a balancing of interests;*
- *necessarily broad and non-specific, and*

•related to matters of common concern or relevance to all members of the public, or a substantial section of the public.

The guidelines went on further to state it is not necessary for a matter to be in the interest of the public as a whole. It may be sufficient that the matter is in the interest of a section of the public bounded by geography or another characteristic that depends on the particular situation.

In *Wilson v Office of the Australian Information Commissioner*, the AAT by reference to the guidelines, listed the public interest lists within the FOI Act. The factors that in particular relevant to this situation are:

(a)promotes the objects of the FOI Act, including to:

(i)inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community

(ii)reveal the reason for a government decision and any background or contextual information that informed the decision

(iii)enhance the scrutiny of government decision making

The AAT went out further to explain the factors in favour of disclosure and the ways for an agency to balance such operation [67]. The tribunal in conclusion found the ground of public interest against disclosure outweighs the other because the disclosure of the document, although considered as an exempt file, would have very real and serious negative consequences for the future operation of the respondent. The tribunal in this case focused on the possible consequences of the release of documents that

Application in this case

The main difference between the *Wilson* case and the present FOI request is the possible consequences the release of the document may have.

As stated above, the test for public interest under FOI is not exhaustive and as stated in *Wilson v AIC*, the balance should be outweighed based on the particular facts of the matter at the time the decision is made.

Facts in the case

This FOI request concerns outcome 2 February 2023 Senate Budget Estimate. As stated in the guidelines and the FOI Act, a document would be considered as a matter of public interest if:

• it related to matters of common concern or relevance to all members of the public, or a substantial section of the public.

I refer you to the title of this outcome: *Support a prosperous and united Australia through effective coordination and delivery of immigration and social cohesion policies and programs.*"

One of the main duties of the Department is to maintain social cohesion and effectively coordinate the delivery of the Australian Immigration program. These documents have particular importance to the Australian community because the Department's work would

have a profound impact on the Australian people, but also on the national interest itself.

There are NO possible factors against such disclosure as the key briefs would not include:

- ...
- *Personal information,*
 - *To prejudice the fair treatment of individuals*
 - *Prejudice the management of the agency*
- ...

The above is a non-exhaustive list and the FOI Act has clearly stated the agency should ensure no irrelevant factor will be considered. Which includes the possible access of the document that could result in embarrassment to the Commonwealth etc.

Conclusion

I conclude that the charges should be waived and the documents should be released to me in accordance with the statutory timeframe.

4 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access or to amend or annotate records.

5 Relevant material

I have considered the following information:

- the arguments you have put forward in your request for waiver dated 13 April 2023
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).

6 Decision on waiver or reduction of charges

I have reviewed the information you provided in requesting a waiver or reduction in the charges. Under section 29(4) of the FOI Act, the Department has decided to:

- not reduce the charges, and affirm its original assessment of the charges to be imposed.

Following the Department's decision, the amount you are liable to pay remains \$208.00.

7 Reasons for decision

In reaching my decision, I have considered the following:

- Whether payment of the charge, or part of it, would cause financial hardship to the applicant or a person on whose behalf the application was made.
- Whether giving access to the document in question is in the general public interest or in the interest of a substantial section of the public.

- Whether disclosure of a document would advance the objects of the Act, for example by promoting better informed decision making, or increasing scrutiny of or oversight into the operations of the Department.

Financial hardship

I have determined that the payment of the charge, or part of it, would not cause financial hardship to the applicant. In forming that view, I have taken the following into consideration:

Applicant's claims of financial hardship

- You have not sought review of the charges on the grounds of financial hardship.

The public interest

I have determined that the disclosure of the documents is not in the general public interest or in the interest of a substantial section of the public. In forming that view, I have taken the following into consideration:

Applicant's claims that disclosure is in the public interest

You have not provided evidence in support of your claim that disclosure of the documents would be in the public interest.

- Information relates to a decision made by the Department, and disclosure will better inform the public on the basis for the decision.

Department's assessment of claims that disclosure is in the public interest

Section 29(5)(b) of the FOI Act requires the Department to consider whether the giving of access to a document or documents is in the general public interest or in the interest of a substantial section of the public. As provided in paragraph 4.107 of the FOI Guidelines, an assessment of the public interest 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 the public may benefit from the release of the documents.

I consider that the following factors indicate that disclosure is not in the public interest:

- The matters referred to in the documents are primarily of interest to the applicant. They are not of broader public interest or of interest to a substantial section of the public.
- The disclosure of the information in the documents would not increase public understanding of a decision made by the Department.

Part 4 of the of the OAIC guidelines with specific reference to the following has also been taken into consideration in arriving at this decision.

4.107 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.

For these reasons, I have decided to not reduce the charges, and affirm the Department's original assessment of the charges to be imposed. The amount you are liable to pay remains \$208.00.

Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

8 How to pay the charge

You may pay by using the online payment facility for credit/debit cards; automated telephone payment system and BPay. You may also pay the charge by cheque or money order.

Electronic funds transfer/credit card payment

If you wish to pay the charges using a credit card, the online payment facility, telephone payment system or BPay, please refer to the tax invoice attached which will include full details of how the payment can be made.

The deposit can be paid by cheque, money order or credit card. Cheques and money orders should be made payable to "Collector of Public Monies DIBP" and sent to:

Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2616

9 Time in which to respond

Under the Act you have 30 days from the date of this notice to provide the Department with a response to my decision and either agree to pay the charges or seek an internal review of my decision. Your full review rights are set out in the next section, headed 'Review Rights'.

Therefore, you must provide the Department with a written response as to how you wish to proceed by close of business **Saturday, 10 June 2023**. However, as this date falls on a non-working day, section 36(2) of the Acts Interpretation Act 1901 provides that the latest date you may respond is close of business the next working day, which is **12 June 2023**.

10 Your Review Rights

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

11 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Home Affairs as the relevant agency.

12 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.

Yours sincerely

Electronically signed

Susan

Case Officer Position Number: 60156398

Freedom of Information Section

FOI & Records Management Branch | Legal Group

Department of Home Affairs

E: foi@homeaffairs.gov.au