

PO Box 7820
CANBERRA BC ACT 2610

Please quote: LEX7511

12 May 2014

Mr Stephen Roddis

By email: foi+request-559-
xxxxxxxxx@xxxxxxxxxxxxx.xxx.xx



Australian Government

Department of Human Services

Dear Mr Roddis,

Your Freedom of Information request

1. I refer to your correspondence received by the Department of Human Services (the department) on 12 April 2014 in which you requested a charge not to be imposed pursuant to section 29(1)(f)(ii) of the *Freedom of Information Act 1982* (FOI Act).

Background

2. The department received your request on 13 March 2014. You sought access to the following documents under the FOI Act:

“the report arising from the Privacy Impact Assessment of myGov”.

3. On 9 April 2014, the department wrote to you to notify you of the preliminary estimate of the applicable charge, totalling \$343.45 (the Charge).
4. On 24 April 2014, the department received your request for the Charge to not be imposed, pursuant to section 29(1)(f)(ii) of the FOI Act. You submitted that the Charge should not be imposed on the basis that access to the information is in the interest of a substantial section of the public.
5. You also noted that the department’s notification indicated that the documents within the scope of your request totalled 5 pages. I note that this figure was a typographical error; the documents falling within the scope of your request total 58 pages.

Decision Maker

6. I am an authorised decision maker under section 23 of the FOI Act.

FOI Legislation

7. Subsection 29(4) of the FOI Act provides that where an applicant has notified an agency that the applicant contends that a charge should be reduced or not imposed in relation to a request under the FOI Act, then the agency may decide that the charge is to be reduced or not imposed.
8. Subsection 29(5) of the FOI Act provides that, without limiting the matters that the agency may take into account when making a decision about whether to reduce or not impose a processing charge, the decision maker must consider:
 - whether payment of a charge, or part of it, would cause financial hardship to an applicant; and
 - 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.
9. Subsection 29(6) of the FOI Act provides that, if an applicant makes a contention about a charge as mentioned in subsection 29(4), the department must take all reasonable steps to notify the applicant of the decision on the amount of charge payable as soon as practicable, but no later than 30 days after it was notified of the contention.

Decision on charge

10. I am authorised to make decisions under the FOI Act and the following is my decision in relation to your request for non-imposition of the Charge and the reasons for my decision.
11. I have re-calculated the charge in relation to your request which has reduced the charge. Additionally, I have decided to reduce the charge by 50% to reflect the extent to which release of the documents would be in the interest of a substantial section of the public.

Reasons for decision

12. I have taken the following material into account in making my decision:
 - the department's letter, dated 9 April 2014, notifying you of the preliminary estimate of the Charge;
 - your correspondence of 24 April 2014, outlining the particulars of your request to seek non-imposition of the Charge;
 - the documents that fall within the scope of your request;
 - the FOI Act;
 - the *Freedom of Information (Charges) Regulations 1982* (the Regulations); and
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Calculation of the Charge

13. As a preliminary step in my consideration of whether a processing charge should apply to this request, I have examined the calculations which were used to determine the Charge and examined the pages in scope of your request.

14. In the letter dated 9 April 2014, the department advised that it has in its possession, three documents in scope, containing an estimated 5 pages. I note that this figure was actually 58 pages. The Charge, totalling \$343.45 was calculated on the following basis:

Search and retrieval time: 1.12 hours at \$15.00 per hour:	\$16.80
Decision-making time: 21.33 hours minus the first 5 hours* at \$20.00 per hour:	\$326.60
TOTAL	\$343.40

15. Following your request for reconsideration of the Charge, I have re-considered the documents that fall within the scope of your request. I have decided that only two documents, comprising 31 pages fall within the scope of your request.
16. In calculating processing charges for FOI applications, the department applies relevant provisions of the Regulations, the FOI Act and the Guidelines in relation to the amounts it is permitted to charge.
17. The department calculates the amount it may charge based on:
- the time taken to search for, and retrieve, files containing documents within scope;
 - the number of third parties to be potentially consulted in the course of making a decision regarding the release of the documents;
 - The number and size (number of pages) of the documents that have been identified as falling within scope and the resultant time taken for decision making in relation to each page of each document (less the first five hours of decision making time, which are free of charge); and
 - The number of pages considered sensitive, requiring redaction (and therefore potentially extra decision-making time).
18. The department enters the information concerning the number and nature of the documents in a calculator provided by the Australian Government Solicitor. While use of this calculator is not mandated, it is provided to agencies for use in the calculation of processing charges under the FOI Act and is in common usage. The decision maker then applies his or her own experience to evaluate the reasonableness of the amount calculated.
19. In relation to this request, the Charge was calculated on the basis that a large number of pages are considered sensitive and may require the deletion of exempt matter (and therefore potentially extra decision-making time).
20. Having examined the calculation of the Charge and the reasoning behind it, I agree with the calculation of the Charge as it was applied to the 58 pages originally determined to be in scope of your request and noting the 5 cent calculation error. However, as I am satisfied that only 31 pages are in scope of your request I have re-calculated the charge applicable for processing your request pursuant to paragraph 29(4) of the FOI Act.

Re-calculation of the Charge

21. I note that the department has in its possession two documents in scope, containing an estimated 31 pages. My assessment of the charge is \$150.83, calculated as follows:

Search and retrieval time: 30 minutes at \$15.00 per hour:	\$7.50
Decision-making time: 12.17 hours minus the first 5 hours* at \$20.00 per hour:	\$143.40

TOTAL	\$150.90
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22. The FOI Act allows for the department to impose a charge for the staff time and resources expended in processing an FOI request. This encompasses the time spent searching for or retrieving the document, and for time spent in deciding whether to grant, refuse or defer access to the document. This includes the time spent examining the document, consulting with relevant third parties, making copies with deletions and notifying the applicant of the final decision on the request.
23. As stated in paragraph 4.3 of the Guidelines, "*charges should fairly reflect the work involved in providing access to documents on request*". I have had regard to whether the re-calculated charge estimate properly reflects the cost of processing your request. In doing so, I have considered whether it was appropriate to issue you a charge.
24. I consider that the Charge notified to you in this letter accurately reflects the work involved in processing the request. While the scope of your request is limited, and accordingly the department was able to locate the documents with relative ease, the Charge accurately reflects the time that would be spent examining and preparing the documents, consulting with relevant third parties, and preparing a final decision.
25. I note that processing charges are designed to be a contribution to the cost of processing FOI requests and do not compensate the full costs associated with the processing of a request. Further, charges are to, as best they are able, fairly reflect the work involved in providing access to documents. I also note that in recognition of the general public interest in allowing access to government information, the FOI Act provides for the first five hours of decision making time to be free of charge for all applicants. This discount was applied to the Charge.
26. Accordingly, I consider that in calculating a charge, it is appropriate to take into account the time spent in processing the request in addition to the time spent identifying and retrieving the documents in scope.

Reduction or Waiver of the Charge

27. I note that subsection 29(5) of the FOI Act prescribes matters I must take into account when an applicant contends a charge should not apply. The reasons for my decision, taking those matters into account, are set out below.

Financial hardship

28. You have not contended that imposition of the charge would cause you financial hardship. In the absence of any information provided by you regarding financial hardship, I have decided that, in this instance, there are no hardship grounds on which a decision not to impose a charge can be made.

Public Interest

29. The decision to reduce or waive a processing charge requires consideration of whether the provision of access to the documents sought is in the general public interest or in the interest of a substantial section of the public. This requires consideration of whether there is a public interest in providing access to the relevant documents and the extent to which the public will receive any benefit from the provision of access to the documents.

30. In support of your request for non-imposition of the Charge you have submitted:

Given Medicare is an essential service and that it is now impossible to use Medicare online without MyGov, I submit there is an overriding public interest in releasing the Privacy Impact Assessment and that all costs should be waived.

31. I have had regard to the subject matter of the document that you have requested, and to the context of its release. I note that the request relates to the MyGov system. MyGov is a government system which has been implemented to facilitate the delivery of a range of Commonwealth Government services. Given the application of this system to members of the public, I consider there may be public debate surrounding the MyGov system. The documents falling within the scope of this request are particularly relevant to this debate.
32. Accordingly, I consider that access to the document is in the general public interest or in the interest of a substantial section of the public.
33. For the reasons set out above, I have decided to reduce the amount of the Charge notified to you by 50% on the grounds of public interest.
34. The total charge payable by you is therefore as follows:

Search and retrieval time: 30 minutes at \$15.00 per hour:	\$7.50
Decision-making time: 12.17 hours minus the first 5 hours* at \$20.00 per hour:	\$143.40
Public Interest Discount (less 50%)	-\$75.45
TOTAL	\$75.45

Conclusion on charge

35. In the Australian Information Commissioner's February 2012 *Review of Charges under the FOI Act*, the Information Commissioner has recommended that when making a decision on charge, an agency should either reduce charges in full, reduce by 50% or not reduce at all. In making my decision, I have taken this recommendation into consideration.
36. As noted, I am satisfied that the general public interest in the release of the documents falling within scope of this request justifies a 50 per cent reduction in charges.
37. On balance, after weighing the arguments you have submitted, I have reduced the charge notified to you, to \$75.45.

Options to proceed with your request

38. In order for your request to continue to be processed, you are required to respond in writing within 30 days of receipt of this notice in accordance with one of the following options:
- A. Pay the Charge;
 - B. Request a review of the decision to impose the Charge; or
 - C. Withdraw your request.
39. Further information on each of these options is set out below.

Option A – Pay the Charge

40. Pursuant to the Regulations, in order to access the documents, you are required to pay a deposit of \$20.00 within 30 days of receiving this notice. You may, of course, elect to pay the Charge in full at this point.
41. The amount due should be paid by cheque or money order and made out to the Collector of Public Monies. Please quote reference number [7511] with your payment.
42. Please send to:
- Vickie Denham
FOI Legal Team
Department of Human Services
PO Box 7788
CANBERRA ACT 2610
43. Should you elect to pay the charge, please email FOI.Legal.Team@humanservices.gov.au once you have posted your cheque or money order to advise us of your payment.

Option B – Request a review of the decision to impose the Charge

44. Please find attached a document setting out your rights of review at **Attachment A**.

Option C – Withdraw your request

45. If you wish to withdraw your request you may do so in writing. Alternatively you may wish to consider narrowing the terms of your request. If the scope of your request can be reduced, the charge may be recalculated accordingly.

Further Information

46. If you do not agree with my decision, you may apply to the Information Commissioner for a review of the decision. I have attached an information sheet that explains your rights of review under the FOI Act (see **Attachment A**).
47. Should you have any enquiries concerning this matter, please contact me.
48. Alternatively, you may send queries via email to FOI.Legal.Team@humanservices.gov.au.

Yours sincerely,



Elizabeth Bell
Principal Government Lawyer
FOI and Information Release Branch
Legal Services Division
Department of Human Services

Attachment A

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Application for review of decision

The Freedom of Information Act 1982 (FOI Act) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by:

- (i) an internal review officer in the Department of Human Services; or
- (ii) the Information Commissioner.

Internal Review

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- made in writing;
- made within 30 days of receiving this letter; and
- sent to the address at the head of this letter.

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review officer decides not to grant you access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time you are notified of the internal review decision.

Please note that if you apply for an internal review and a decision is not made by an internal review officer within 30 days of receiving the application, you have the right to seek review by the Information Commissioner for a review of the original FOI decision on the basis of a 'deemed refusal' decision. An application for Information Commissioner review in this situation must be made within 60 days of the date when the internal review decision should have been made (provided an extension of time has not been granted or agreed).

Information Commissioner review

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au Post: GPO Box 2999, Canberra ACT 2601 Fax: +61 2 9284 9666 Email: enquiries@oaic.gov.au	In person: Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney NSW
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If a person has sought an internal review and no result of that review is provided within 30 days, then the applicant may apply to the Information Commissioner to review the matter.

An application form is available on the website at 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.

Complaints to the Commonwealth Ombudsman and Information Commissioner

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.

Information Commissioner

You may also complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

