



Glenn Hamiltonshire

Via email: foi+request-11714-a3c96b81@righttoknow.org.au

Dear Glenn Hamiltonshire

Your Freedom of Information request – Charges decision

I refer to your Information Commissioner (IC) review of the charges decision made by the Department of Agriculture, Fisheries and Forestry (**department**) under the *Freedom of Information Act 1982* (Cth) (FOI Act) on 2 September 2024 (**charges decision**). The charges decision relates to your request of 18 July 2024, for the following documents:

'I request access to the Style Guides/Brand Guides/Writing Guides currently used for the Department of Agriculture Fisheries & Forestry'

Section 55G of the FOI Act provides that during an IC review, an agency or minister may vary (or set aside and substitute) an access refusal decision, which includes a charges decision, in relation to a request at any time if the variation (the *revised decision*) or substitution would have an effect of relieving the IC review applicant from liability to pay a charge.

My decision

I have decided that the cost of issuing, calculating and collecting a charge in these circumstances outweighs the cost of processing the request. As a result, I have decided not to impose the charge of \$106.22.

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A**.

Time periods of processing your request

Section 31 of the FOI Act provides that where a notice is sent to an applicant regarding payment of charge in respect of a request, the time limit for processing the request is suspended from the date the applicant was notified of the charge until:

- the day after the charge (or deposit) is paid; or
- if applicable, where a subsequent review decision has been provided, the day after:
 - a charge or deposit has been paid; or
 - the applicant is notified of a decision to not impose the charge.


Review of my decision

In accordance with section 55G(2) of the FOI Act, my revised decision will now be the decision under review by the IC. A copy of this revised decision will be sent to the OAIC to consider as part of their IC review.

Further assistance

If you have any questions, please email foi@aff.gov.au.

Yours sincerely



Rhett Somers
A/g Assistant Secretary
Communication and Media Branch
Enterprise Strategy and Governance Division
20 December 2024

REASONS FOR DECISION

What you requested

I request access to the Style Guides/Brand Guides/Writing Guides currently used for the Department of Agriculture Fisheries & Forestry'

Charges notification and contention of charges

On 2 August 2024, I wrote to you to inform you of my preliminary assessment of the charge for processing your request. My preliminary assessment of that charge was \$106.22 on the basis that the department has in its possession 5 documents with 161 pages relevant to your request.

On 6 August 2024, you responded to my correspondence of 2 August 2024 to contest and seek non-imposition of this charge. On 2 September 2024, the department made a charges decision in respect of this matter, which affirmed the decision to impose a charge. This decision was sent to you on 3 September 2024.

On 3 October 2024, you requested the IC review the decision to impose a charge.

What I took into account

In reaching my decision, I took into account:

- your original request dated 18 July 2024;
- other correspondence from you on 6 August 2024 and 3 September 2024;
- the preliminary assessment of charges dated 2 August 2024;
- the charges decision dated 2 September 2024;
- your request for IC review dated 3 October 2024;
- your submissions to the OAIC during the IC review;
- the documents that fall within the scope of your request;
- consultations with departmental officers about:
 - the nature of the documents; and
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**);
- the *Freedom of Information (Charges) Regulations 2019* (**Regulations**); and
- the FOI Act.

Reasons for my decision

I am authorised to make decisions under section 23(1) of the FOI Act.

Under section 29(5) of the FOI Act, I am required to take into account whether the payment of the charge would cause financial hardship to you, and whether the giving of access to the documents is in the general public interest or in the interest of a substantial section of the public.

I have decided that the cost of issuing a charge in these circumstances outweighs the cost of processing the request. As a result, I have decided not to impose the charge of \$106.22.

Your contentions

On 3 October 2024, you contended that the charge was wrongly assessed and also requested a waiver of the charge for processing your request under the FOI Act. Specifically, your submissions provided:

'I wish to contend that the charge has been wrongly assessed. My reasons are as follows. In Emmanuel Freudenthal and Department of Foreign Affairs and Trade (Freedom of information) [2019] AICmr 15, the Information Commissioner stated at [46]: "The FOI Guidelines explain that the 'lowest reasonable cost' objective should be interpreted broadly in imposing any charges under the FOI Act and that where the cost of calculating and collecting a charge might exceed the cost to the agency to process the request, it would generally be more appropriate not to impose a charge." Furthermore, she states: "In assessing the costs of calculating and collecting a charge, agencies should also take into account the likely costs that may be incurred by the agency, as well as other review bodies, if the applicant decides to seek further review." These principles regarding cost assessment are further elaborated upon in subsequent decisions. The legislative framework for charges and related aspects of the FOI Guidelines is discussed at length in the decision of 'ABX' and Department of Veterans' Affairs (Freedom of information) [2022] AICmr 57 (ABX). In ABX, the applicant sought IC review of a decision of the Department of Veterans' Affairs (DVA) to impose a charge of \$403.45 to process an FOI request. ABX considers whether a charge should be imposed where the cost to the Commonwealth of assessing, imposing and collecting the charge from the applicant might exceed the cost to DVA of processing the applicant's request (or the amount of the charge itself). The FOI Commissioner explained at [3]: "As a general rule, a charge should not be imposed in circumstances where the cost of assessing, imposing and collecting a charge is likely to be greater than the charge itself. In those circumstances, imposing a charge will generally only serve to delay or discourage access while incurring a net cost to the Commonwealth." In determining whether a charge should be imposed, the FOI Commissioner stated at [45]: "Even if a charge could have been correctly imposed by reference to an actual cost of \$291.68, the Department should have considered at the outset whether it was preferable to decide that the applicant was liable to pay a charge at all. The amount of that charge should have raised an obvious question in the minds of those considering its imposition – would it cost the Commonwealth an amount greater than the charge itself to assess and notify the charge, provide the applicant with procedural fairness, and collect the charge? The likely answer to that question would have been 'yes'. In those circumstances, proceeding with a charge would likely only serve to delay access at a net financial cost to the Commonwealth. While the FOI Act and Charges Regulations would not, by their terms, have prevented the Department from deciding the applicant was liable to pay a charge, the preferable decision would have been to decide that the applicant was not liable to pay a charge." The FOI Commissioner accepted that, in the circumstances of the matter before him, the cost of calculating and collecting a charge might exceed the amount of the charge itself.

He noted that the object set out in s 3(4) is not limited to the provision of access at the lowest reasonable cost, but also expresses a parliamentary intention that functions and powers under the FOI Act must be performed and exercised to facilitate and promote the prompt public access to information. The FOI commissioner was satisfied that having regard to these considerations, and the public resource already applied in relation to the matter, warranted a decision that no charge be applied in the circumstances. I also wish to bring to your attention recent IC Review decisions regarding whether a charge has been wrongly assessed. In Paul Farrell and Services Australia (Freedom of information) [2023] AICmr 27 (Paul Farrell and Services Australia), the Department determined that the applicant is liable to pay a charge of \$342.10 for processing the request. Services Australia submitted that ABX was inconsistent with the FOI Guidelines and previous decisions. The Information Commissioner extensively disputed the Department's submissions and addressed the implications of ABX at [35]-[45]. In this IC Review, the applicant had already made a deposit to progress the processing of their FOI request. As the bulk of the cost necessary to administer the charge had already been utilised and spent, this decision under review differs slightly.

The Information Commissioner stated at [48]: "This is notwithstanding that, in my view, a decision not to impose any charge would have been open, and probably would also have been the preferable decision to make, under s 29(4) had Services Australia approached the decision-making process differently." In CropLife Australia and Department of Agriculture, Fisheries and Forestry (Freedom of information) [2024] AICmr 159, the Department determined that the applicant is liable to pay a charge of \$710 for processing the request. The Assistant Commissioner, Freedom of Information, stated at [25]: "I also note that in this case, there is a real possibility that the cost of calculating and collecting a charge might exceed the cost to the agency of processing the request, which would militate in favour of the waiver of the charge. As noted in ABX, in such circumstances, proceeding with a charge would likely only serve to delay access at a net financial cost to the Commonwealth."

Financial hardship

Under section 29(5)(a) of the FOI Act, I am required to consider whether payment of the charge would cause financial hardship to you.

As you have not provided evidence in relation to your financial status at any stage during the processing of this request, I am not satisfied that the payment of the charge would cause financial hardship to you. I do not consider this to be a reason to waive or reduce the charge.

Public interest

Under section 29(5)(b) of the FOI Act, I am required to consider whether giving access to the documents would be in the general public interest or the interest of a substantial section of the public.

Paragraph 4.107 of the Guidelines relevantly provides:

An applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that would benefit from this disclosure. This may require consideration both of 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 the public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents.

I note that you have not provided any submissions in relation to the release of these documents being in the public interest in your request for IC review. Noting this, and as advised in the charges decision, I am not satisfied that the documents in scope of your request would contribute meaningfully to a public benefit and therefore do not consider this to be a reason to waive or reduce the charge.

Other considerations

In accordance with section 29(5) of the FOI Act, I note that I may take into account matters other than financial hardship and the public interest in making my decision to impose a charge. I note your contention that the charge has been wrongly assessed. You have submitted that the 'lowest reasonable cost' objective should be interpreted broadly in imposing any charges under the FOI Act and that where the cost of calculating and collecting a charge might exceed the cost to the agency to process the request, it would generally be more appropriate to not impose a charge. Further, you have noted that agencies should take into account the likely costs that may be incurred by the agency, as well as other review bodies, if the applicant decides to seek further review.

I have considered your submissions and considered the documents in question. I note that the charges have been calculated in accordance with the FOI Act and Regulations. Although I am not of the view that the charges have been wrongly assessed, in these circumstances, I consider that the cost of collecting the charge will exceed the cost of processing the request. As such, I have decided not to impose a charge.

Conclusion

As set out above, I have decided to not impose the charge of \$106.22 on the basis that the cost of calculating and collecting the charges in these circumstances outweighs the cost of processing the request.