



25 October 2024
FOI Ref 3687

Ash Roth
By email: foi+request-11806-d7e8354d@righttoknow.org.au

Dear Ash

FREEDOM OF INFORMATION REQUEST – CHARGES DECISION

I refer to your request to the Treasury on 31 July 2024, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

I am seeking copies of briefing notes provided to the Minister for Housing between 1 March 2024 and 31 July 2024 that address the National Housing Accord and/or the 1.2 million homes target.

On 27 September 2024, in accordance with section 29 of the FOI Act, I provided a charges notification informing you that you are liable to pay a charge in respect of the processing of your request and my preliminary assessment of the amount of the charge.

On the same day, you responded to the charges notice as follows:

I have specifically requested briefing notes that were provided to the Minister for Housing - and only those notes, not other files, drafts, or other miscellaneous materials - during a set period of time, on a single specific topic.

To suggest that it requires over 32 hours - that is more than 4 days - of full time work is not credible or reasonable.

The Department is required under the Act to provide information at the "lowest reasonable cost". This is a topic of central interest to the public. I ask that the Treasury re-examine the reasonableness of the charge proposed, and instead provide the documents at nil cost.

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

treasury.gov.au

@treasury_AU

@commonwealthtreasury

@australiantreasury

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Parkes ACT 2600
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Decision

I have decided to reduce the original charges estimate by 50 per cent to \$252.67.

Reasons for decision

Under section 29(5) of the FOI Act, two matters which must be considered when determining whether to reduce or waive a charge are:

- whether paying the charge would cause financial hardship, and/or
- whether release of the requested documents is in the general public interest or in the interest of a substantial section of the public.

In relation to the financial hardship ground, you have not provided any submission or evidence to indicate that payment of the charge would cause financial hardship. As such, I have not considered this matter further.

You have referred to the public interest ground in your charge contention. I have considered this below.

Public interest

Section 29(5)(b) of the FOI Act provides that, without limiting the matters an agency may take into account in determining whether to reduce or waive a charge, the agency must consider whether the giving of access to the documents in question is in the general public interest or in the interest of a substantial section of the public. It is not sufficient that the information is merely of special interest to an individual.

Paragraph 4.99 of the FOI Guidelines provides that an agency may decide to impose a charge where the documents are not of general public interest or of interest to a substantial section of the public.

Further, paragraph 4.107 of the FOI 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 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 documents.

In my view, although the topic may be of interest, the public interest in maintaining State and Territory relationships and the confidentiality of Cabinet processes are significant factors against release. On this basis, I do not agree there is a public interest that warrants waiver of charges. Furthermore, my preliminary view is the documents would likely be exempt in full. I do not consider any public interest to be served in a decision which adds nothing to the public record.

In this respect, I do not consider that processing your request is in the general public interest or in the interest of a substantial section of the public. Therefore, I have decided that there is no public interest in waiving the estimated charge.

Other factors – charge calculation

You also dispute the work involved in processing your request. I do not agree with your submissions for the reasons discussed below. In deciding whether charges should be reduced or waived, I have also considered section 29(4) of the FOI Act which provides a general discretion to decide that matter, which goes beyond consideration of the public interest. This includes the estimated time and cost to the Treasury, including staff and other resources, in processing your request.

My preliminary assessment of the charge was based on:

- the time taken to search, retrieve, and schedule the documents within scope of your request;
- the number of third parties with whom it will be necessary to consult in the course of making a decision regarding the release of the documents;
- the number of documents and pages within scope of the request, and the resultant time required for decision-making in relation to each of those pages (less the first five hours of decision-making, which are free of charge); and
- the number of pages considered sensitive and potentially requiring redaction (and therefore extra decision-making time may be involved).

The documents you are seeking contain sensitive information that requires close review and likely exemption under the FOI Act. The content requires mandatory consultation with every State and Territory under section 26A of the FOI Act. It also requires consultation with another Commonwealth Department. At a conservative 2 hours per consultation, this represents around 18 hours work. Two hours per consultation is a conservative estimate of the actual time required to draft, approve, and send the consultation, prepare and send relevant document(s), respond to questions, follow up consultation responses and consider each consultation response. The remaining 14 hours is a very conservative time estimate to locate documents, create pdf versions, schedule documents, closely review the documents for sensitive information, make a decision recommendation on each document, mark up relevant exemptions in the documents, draft a decision letter and correspond with you. I am satisfied the charge for this work is fair and at the lowest reasonable cost.

I have also considered the impact of diverting staff resources to process your request from the Treasury's other operations. Further, I have considered that processing charges are designed to be a contribution to the cost of processing an FOI request and does not compensate the full cost associated with the processing of a request, which are ultimately subsidised by the Australian taxpayer.

For the reasons above, I consider the effort involved for the department in processing your request is fairly represented by the charge of \$505.33. As a sign of good will, however, I have decided to reduce this charge by 50 per cent to \$252.67. Noting this is a processing charge, it does not guarantee any document will be released to you.

What you need to do

You have 30 days to pay the charge in full (\$252.67) or pay a 25% deposit (\$63.17) now and the remainder before you receive any documents. An attachment to this letter sets out the payment options.

Right of review

A statement setting out your rights of review in this matter is also attached.

Yours sincerely

A handwritten signature in black ink, appearing to read 'ND', with a long, sweeping horizontal stroke extending to the right.

Nicholas Dowie
Assistant Secretary
Housing Division

Department of Treasury Payment Options

Customer Name: _____

Customer Address: _____

FOI Number: _____

Option 1: Bank Cheque or Australian Money Order – made out to “Collector of Public Monies”

Attached

Option 2: Please debit my credit card as follows:

AMEX

VISA

Mastercard

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Card Number

Expiry Date

CCV Number

Total Amount

Name on Card

Signature of card holder

*Send your completed form:
by post to: FOI Officer, The Treasury, Langton Crescent, Parkes ACT 2600
or by Email to: FOI@treasury.gov.au*

Office Use Only			
File Number:		Trim Number:	
Cost Centre:		GL Code:	
Customer Number:		DAN Number:	

INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the Freedom of Information Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

An application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

An application for a review of the decision should be emailed to FOI@Treasury.gov.au.

OR

2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the FOI Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

An application for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

AND/OR

3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the FOI Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.