



Ash Roth

Via email: foi+request-11947-7ccfa5e6@righttoknow.org.au

Dear Ash Roth

Your Freedom of Information request – Charges decision

I refer to your request, dated and received by the Department of Climate Change, Energy, the Environment and Water (**department**) on 25 August 2024 for access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to the following documents:

'I am seeking copies of correspondence between the Department and The Australia Institute, and the Department and Greenpeace, on the topic of the reforms of the EPBC Act / the Nature Positive reforms, from 1 January 2024 onwards.'

My decision

I have decided to affirm the charge of \$221.83.

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

Payment details

If you would like the department to continue processing your request, you must respond to the department within 30 days after receiving this notice. If you do not respond within 30 days, your request will be taken to have been withdrawn and no further action will be taken by the department.

As the charge exceeds \$100, you are required to pay a deposit of \$55.46.

Payment can be made by direct deposit to:

A/C Name: DCCEEW Departmental Account
Branch: London Circuit, Canberra
Bank: Reserve Bank
BSB: 092 009
A/C No. 147762
ABN No: 63 573 932 849

Please include the FOI reference number (LEX-78014) in the description/reference field when making payment and send an email with notification of payment to foi@dcceew.gov.au as soon as it has been made.

If you are not able to pay by direct debit, please contact the department for assistance.

Time periods of processing your request

Section 31 of the FOI Act provides that where a notice is sent to an applicant regarding the payment of a 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.

The department notified you in our preliminary assessment of charges that we would be undertaking third party consultations. Subsection 15(6) of the FOI Act extends the standard statutory 30-day limit of processing requests by another 30 calendar days. Accordingly, this will give the department 60 calendar days within which to notify you of its decision on access to documents.

You can ask for a review of my decision

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to foi@dcceew.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

You can also make a complaint to the Commonwealth Ombudsman if you have concerns about how the Department handled a request for documents under the FOI Act, or took any other action under the FOI Act. There is no fee for making a complaint to the Commonwealth Ombudsman.

Information about making a complaint to the Commonwealth Ombudsman is available in its website www.ombudsman.gov.au or phone the Ombudsman on 1300 362 072.

Further assistance

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

Yours sincerely



Anna-Liisa Lahtinen
Acting Branch Head
Policy and Legislation Branch
Nature Positive Taskforce
16 October 2024

REASONS FOR DECISION

What you requested

'I am seeking copies of correspondence between the Department and The Australia Institute, and the Department and Greenpeace, on the topic of the reforms of the EPBC Act / the Nature Positive reforms, from 1 January 2024 onwards.'

What I took into account

In reaching my decision, I took into account:

- your original request dated 25 August 2024;
- the preliminary assessment of charges dated 13 September 2024;
- your submission for internal review of the charges dated 16 September 2024;
- 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.

I have decided to affirm the charge of \$221.83. My findings of fact and reasons for this decision are discussed below.

Preliminary assessment of charge

On 13 September 2024, I wrote to you to advise you that I had decided to impose a charge of \$221.83 for processing your request.

My preliminary assessment of that charge was calculated as follows:

Search and retrieval time: 10 hours at \$15.00 per hour	\$150.00
Decision-making time: \$20.00 per hour	
Examining pages, redacting and scheduling documents	\$71.83
Consultation with one third party at 2 hours per party	\$20.00
Writing statement of reasons	\$60.00
Deduction of 5 hours decision-making time*	-\$100.00
TOTAL	\$221.83

*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

Your contentions

On 16 September 2024, you requested a waiver of the charge for processing your request under the FOI Act, on the grounds that the charges levied were not reasonable. Specifically, your correspondence provided:

'I object to the charges proposed.

The Department has identified 30 documents totalling 65 pages with one external party (an average of less than three pages per document). Given the documents involve a public not-for-profit third-party, in no way are they conceivably going to be classified or sensitive documents that require specialist consideration and processing. It is excessive to claim over 18 hours of work is required to process this handful of documents.

The Department is required under the Act to provide information at the "lowest reasonable cost". It is not reasonable to take over 18 hours (or two and a half full days of work) to consider 65 pages.

I ask that this cost is reconsidered, and the documents provided at nil cost given the low volume of documents identified and the likely non-classified nature of the documents.'

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, I am not satisfied that the payment of the charge would cause financial hardship to you.

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.

As you have not provided any submissions in relation to the public interest in the case of these documents, I am not satisfied that there is a public interest in the disclosure of the documents.

Other matters

Under section 29(5) of the FOI Act, I may take into account other matters in determining whether or not to impose the charge.

I have considered your submissions objecting to the charges proposed. Specifically, I have considered whether the charges imposed are reasonable under the circumstances.

In your submission, you argue that it is not reasonable to take over 18 hours to consider 65 pages. I agree that it would be unreasonable to take over 18 hours to merely assess 65 pages, however the calculated charges are not only based on the time it takes to assess the documents for sensitivities, but also a multitude of other tasks involved in processing your request. This includes the initial searches to find the documents, the sorting and scheduling of the documents,

the preparation and sending of consultation packages and assessment of subsequent consultation responses, redacting any sensitive material, and the preparation of the final decision.

You have stated that 'in no way are [the documents] going to be classified or sensitive documents that require specialist consideration and processing'. Your assumption that the documents contain no sensitive material is mistaken as the documents contain the personal information of third parties, including names and contact details, and this information needs to be assessed as to whether it is exempt under s47F of the FOI Act. Additionally, we are unable to pre-empt whether third parties will raise any objections to the release of documents concerning the business affairs of their organisation, and if they do, their contentions will require consideration and assessment.

When calculating the original preliminary charges for this matter, I took into account Section 3 of the FOI Act which states that agencies should be guided by the 'lowest reasonable cost' objective when assessing charges. Accordingly, the hours charged for searching was significantly reduced and a conservative estimate applied when considering the future decision-making time. The standard estimates for consultation and preparation of the statement of reasons have been used.

Please note that after making my decision on your FOI request where a charge was estimated, I am required to calculate the final charge based on the actual time taken to process the request. If the actual processing time is less than what was estimated, a refund of the difference will be provided to you.

Conclusion

As set out above, I have decided to affirm the charge to \$212.83 impose the charge on the basis that I am satisfied that the initial preliminary charge has been assessed correctly.