



Ash Roth

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

Dear Ash Roth

Your Freedom of Information request – Internal review of charges decision

I refer to your internal review request received by the Department of Climate Change, Energy, the Environment and Water (**department**) on 24 October 2024 of a charges decision previously issued to you on 16 October 2024.

The charges decision relates to your request for access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**), received by the department on 25 August 2024, 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 am authorised to make decisions under section 23(1) of the FOI Act.

I have decided to **waive** the charge of \$221.83.

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 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.

As I have decided to waive the charge, a decision is now due to you by 30 December 2024.

You can ask for a review of my decision

You may apply 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



James Tregurtha
Division Head
Nature Positive Taskforce Division

20 November 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;
- the contention of charges dated 16 September 2024;
- the charges decision dated 16 October 2024;
- your internal review of charges request dated 24 October 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 **waive** 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, the department wrote to you to advise you that you were liable for a charge of \$221.83 for processing your request.

The 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	\$40.00
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.

Charges decision

On 16 October 2024, the department wrote to you to advise that a decision had been made to affirm the charge of \$221.83 for processing your request.

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 charge had been incorrectly assessed. Specifically, your correspondence stated:

'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.'

On 24 October 2024, you submitted an internal review request of the charges decision issued to you on 16 October 2024, requesting again that the charges be waived. Specifically, your correspondence stated:

'In Emmanuel Freudenthal and Department of Foreign Affairs and Trade (Freedom of information) [2019] , the Information Commissioner stated:

"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, the Commissioner stated:

“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].

In that decision, the FOI Commissioner explained:

“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:

“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.”

I also wish to bring to your attention recent IC Review decisions regarding whether a charge has been wrongly assessed.

This includes Paul Farrell and Services Australia (Freedom of information) [2023] , and CropLife Australia and Department of Agriculture, Fisheries and Forestry (Freedom of information) [2024] .

Given the extensive case law established by these recent decisions, I strongly urge you to reconsider whether your charge might incur a net financial cost to the Commonwealth. The Information Commissioner has consistently demonstrated a preference for waiving charges when their collection costs could potentially outweigh the processing costs, particularly in cases where the charges were significantly higher than in this case. I believe the same logic applies in this instance, and waiving the charge would align with the principles of fairness, efficiency, and promoting prompt public access to information.’

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.

Paragraph 4.101 of the Guidelines relevantly provides:

Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself and your family, or other people for whom you are responsible.

The Guidelines further provide that an applicant relying on the grounds of financial hardship would ordinarily be expected to provide some evidence of financial hardship, such as receipt of an income support payment or evidence of income, debts or assets. In this regard, I note that you have not provided evidence to support a claim regarding financial hardship.

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.

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.

Paragraph 4.108 of the Guidelines further provides:

There is no presumption that the public interest test is satisfied by reason only that the applicant is a Member of Parliament, a journalist or a community or non-profit organisation. The Guidelines further provide that it is necessary to go beyond the status of the applicant and to look at other circumstances.

I have noted your submissions and considered the objects of the FOI Act. I am satisfied that it would be in the public interest to waive the charge to process your FOI request.