



**Australian Government**

**Department of Health and Aged Care**

Therapeutic Goods Administration

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Email: s22

Dear s22

**FREEDOM OF INFORMATION REQUEST FOI 5350  
Notice of Decision – Request for a waiver of charges**

1. I refer to your request dated 16 August 2024 under the *Freedom of Information Act 1982* (the FOI Act) and subsequent correspondence between you and the TGA in which the scope of your request was clarified as being for access to the following documents:

*'Documents in the possession of the office of the Deputy Secretary and/or the Chief Medical Advisor since 1 January 2024 that relate to the causes -- known, suspected or speculated -- of shortages of intravenous (IV) fluid products in Australia.'*

The timeframe of the request is from 1 January 2024 to 16 August 2024.

**Background**

2. On 16 August 2024, the TGA received a request from you under the FOI Act.
3. On 24 September 2024, you were advised that the costs associated with processing your request amounted to \$796.78 and you were asked to;
  - pay the charge, being either the deposit or the full amount, and notify the TGA FOI Team; or
  - argue that:
    - the charge was wrongly assessed, providing reasons; or
    - the charge should be reduced or not imposed, providing reasons; or
  - withdraw your request.
4. On 25 September 2024, the TGA received the payment for processing your request in full. In addition, you submitted a request for a waiver of further charges on public interest grounds.

**Decision Maker**

5. I am the TGA officer authorised to make this decision under section 23 of the FOI Act. What follows is my decision under the FOI Act.

**Decision**

6. I have decided to reduce the charges that can be imposed for the processing of your request by 70%. As the initial estimated charge was \$796.78, the revised estimated charge is \$239.04 with an initial deposit of \$59.76.

## Material Considered in Decision-Making

7. In coming to my decision I had regard to the following:
- your request for documents under the FOI Act dated 16 August 2024;
  - my initial decision of 24 September 2024 to impose charges of \$796.78;
  - the correspondence from you of 25 September 2024, requesting that the charges be waived as access to the documents is in the public interest;
  - the FOI Act and, in particular, section 29 of the FOI Act; and
  - the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

## Reasons for Decision

8. In considering a request that charges not be imposed, subsection 29(5) of the FOI Act provides:

*Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:*

- (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and*
- (b) 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. In addition, Part 4 of the FOI Guidelines sets out the matters I must have regard to in considering a request not to impose a charge.
10. In making this FOI request, you have not made any submissions about your current financial affairs or provided any evidence of financial hardship and have not requested a waiver or reduction of charges on financial hardship grounds.
11. Therefore, currently, there is insufficient evidence for me to be satisfied that payment of the charge would cause you financial hardship.

### Public Interest

12. In considering whether granting access to the documents would be in the public interest or in the interest of a substantial section of the public, the FOI Guidelines say it is important to identify the 'general public interest' or the 'substantial section of the public' that would benefit from disclosure.
13. I consider that the documents coming within the scope of your request may be in the general public interest.
14. In considering the public interest, paragraph 4.109 of the FOI Guidelines sets out a non-exhaustive list of examples in which it may be appropriate to reduce or waive a charge. The factors that may be relevant here include the following:
- the document relates to a matter of public debate, or to a policy issue under discussion within an agency, and disclosure will assist public comment on, or participation in, the debate or discussion; and/or
  - The document is to be used by a journalist to prepare a story for publication that is likely to be of general public interest.
15. In your submission you indicated that *"There has been significant interest in this matter in the Federal parliament."* You also state *"There has also been significant media interest in this matter."*

16. I am satisfied that a substantial section of the public may benefit from the disclosure of this information.

### Conclusion

17. On the basis that the giving of access to the documents is in the public interest as set out above, I have decided to reduce the charges associated with the processing of your FOI request by 70%.

18. Please note my decision to reduce the charges by 70% will apply to the **final amount** of charges that can be imposed. Under the *Freedom of Information (Charges) Regulations 2019* (the Charges Regulations), once an FOI is complete, the TGA is required to determine the **actual** charges that can be imposed under the Charges Regulations associated with processing the request. This final amount may be higher or lower than the estimated charges.

19. In the event the final charge is less than the estimate, you will be refunded the difference. If the final charges exceed the estimate (and my decision is to give you full access to all relevant information) regulation 10(2) allows me to charge the actual cost (including the 70% reduction). If any information is exempt, a higher amount cannot be imposed.

### **Time limit for processing your FOI request**

20. At decision making stage the actual charges will be calculated. As you have paid the estimate of charges in full, you will be refunded any overpayment.

21. In addition to this, and as detailed in the notice of estimate of charges letter, the time limit for processing your request was suspended, in accordance with section 31 of the FOI Act, from the date you received that notice, which was 24 September 2024. Subsequently, the time limit for processing your request resumed once payment was received, which was 25 September 2024.

22. Further, as your request relates to the personal, professional, business, commercial or financial affairs of third parties, pursuant to section 27 and 27A of the FOI Act, the TGA is required to consult with the affected third parties and provide them an opportunity to make submissions regarding the release of the documents.

23. Accordingly, under section 15(6) of the FOI Act, and upon payment of a deposit, the timeframe for processing your request has been extended by 30 days to allow the consultation process to be conducted.

### **Review and Complaint Rights**

24. If you are not satisfied with this decision, you can either seek internal review or apply to the OAIC for review of the decision. Further information can be found on the OAIC website at the following link: [www.oaic.gov.au/freedom-of-information/reviews-and-complaints/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)

25. If you have any queries regarding this matter, please contact the FOI Team via email at [TGAFOI@health.gov.au](mailto:TGAFOI@health.gov.au) or telephone (02) 6289 4630.

Yours sincerely

*Authorised and electronically signed by*

s22  
s22 to the Deputy Secretary  
Therapeutic Goods Administration  
3 October 2024