


From: [TGA FOI](#)
To: 
Cc: [TGA FOI](#)
Subject: RE: FOI 5348 - Notice of Estimate of Charges [SEC=OFFICIAL]
Date: Tuesday, 24 September 2024 1:30:56 PM
Attachments: [image001.png](#)

Dear 

I refer to previous correspondence regarding your FOI request 5348.

I write to advise that the decision maker has decided not to impose charges for the processing of your FOI request.

As notified in the Estimate of Charges letter sent to you on 28 August 2024, the processing timeframe was suspended under section 31(2)(a) between the time the charges were issued and receipt of a deposit/decision on the waiver or reduction of fees. Accordingly, as the charges for processing your request are not being imposed, the processing of your request has recommenced.

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.

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

The current due date for a decision in relation to your request is **12 November 2024**.

If you have any questions or concerns, please don't hesitate to contact the FOI team.

Kind regards



Freedom of Information



Therapeutic Goods Administration
Australian Government Department of Health and Aged Care
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PO Box 100, Woden ACT 2606, Australia
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The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.

-----Original Message-----

From: s22

Sent: Thursday, August 29, 2024 7:01 PM

To: TGA FOI <xxxxxx@xxxxxx.xxx.xx>

Subject: Re: FOI 5348 - Notice of Estimate of Charges [SEC=OFFICIAL]

REMINDER: Think before you click! This email originated from outside our organisation. Only click links or open attachments if you recognise the sender and know the content is safe.

Dear Freedom of Information Team,

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.”

Given the extensive case law established by these recent decisions, I strongly urge you to reconsider whether your charge of \$130.28 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 mine: \$291.68 in ABX, \$342.10 in *Paul Farrell and Services Australia*, and \$710 in *CropLife Australia*. 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.

Yours sincerely,

-----Original Message-----

Dear s22

Please find attached correspondence in relation to your Freedom of Information request.

IMPORTANT: Please include reference to FOI 5348 in your payment.

The decision maker is yet to make a decision on your request.

Should you wish to proceed with your request, you will note from the attached letter that you are required to pay a deposit before the request can be processed. If you do not pay the deposit within 30 days, your request will be treated as withdrawn.

Consultation

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.

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

If you have any questions, please do not hesitate to contact the FOI Team.

Kind regards,

Freedom of Information

can be found at:

<https://www.righttoknow.org.au/help/officers>

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