



6 December 2024
FOI ref: 3788

CR

By email: foi+request-12289-20994387@righttoknow.org.au

Dear CR

FREEDOM OF INFORMATION REQUEST – DECISION

I refer to your request to Treasury on 7 November 2024 which was subsequently revised by agreement for access, under the *Freedom of Information Act 1982 (FOI Act)*, to the following:

Part 1: FOI Reference, Notice date, Notice amount; exclude everything else

Part 2: FOI Reference, Decision date, Decision; exclude everything else

Part 3: FOI Reference, Internal Review decision date, Internal Review decision; exclude everything else

Part 4: (deleted)

Part 5:

- *If an applicant paid a charge (whether in full or as a deposit), the amount paid, and*
- *If there was a refund to the applicant, the amount refunded,*
- *Exclude everything else*

Part 6:

- *Whether a request was withdrawn, deemed withdrawn, or neither, exclude everything else*

Parts 1.ii, 2.ii, 3.ii:

- *Documents that provide any written explanation or justification regarding whether the cost of calculating and collecting the charge may exceed the cost to the agency or the Commonwealth, exclude everything else*

Time period: 1 July 2022 to 5 November 2024

- *If multiple charge notices were issued for a single request ... all charge notices are in scope. Final charge notices ... that differ from the previous charge are also in scope.*

- *If your agency administers FOI requests on behalf of another entity ... such requests are included.*
- *Some agencies, when deciding to waive a charge following an applicant's contention, may simply state that they have "decided not to impose charges for this request". Other agencies, in similar circumstances, provide a formal decision notice, including a statement of reasons and review rights. For the purposes of my request, both informal and formal decision notices are within scope.*
- *If multiple charge decision letters have been issued for a single request ... all such letters are included in the scope of this request. Charge decisions made under section 55G of the FOI Act are also included.*

On 2 December 2024, I agreed to release the information sought in Parts 1 to 6 via administrative access. On the same day, you subsequently withdrew Parts 1 to 6 of your request, leaving only Parts 1ii, 2ii and 3ii remaining.

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

Decision

The Treasury has identified two documents in the scope of your request. I have decided to refuse access to both documents in full on the ground of legal professional privilege. Further information regarding my decision is set out below.

Material Considered

The material to which I have had regard in making this decision includes the scope of the FOI request, the content of the documents subject to your request, the relevant provisions in the FOI Act, advice from subject matter experts within the Treasury, and the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

Reasons for decision

Section 42 – Legal Professional Privilege

The documents in scope of Parts 1ii, 2ii and 3ii contain material which is exempt from release under section 42(1) of the FOI Act. Section 42(1) provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

Both the documents constitute legal advice from Treasury in-house lawyers to FOI decision makers. I am satisfied that in relation to the documents, a legal adviser-client relationship was in existence. The communication was for the purpose of giving or receiving legal advice and the communication was independent and confidential.

Therefore, I am satisfied that the documents are exempt in full under section 42(1) of the FOI Act and will not be released.

Rights of Review

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

Yours sincerely

David Hertzberg

David Hertzberg
A/g Assistant Secretary
Law Division

INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the FOI 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.