



CR

Via email: CR [foi+request-12292-59cdd04b@righttoknow.org.au](mailto:foi+request-12292-59cdd04b@righttoknow.org.au)

Dear CR

### **Your Freedom of Information request – consultation**

I refer to your request, dated and received by the Department of Climate Change, Energy, the Environment and Water (**department**) on 5 November 2024 for access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) (see **Attachment A** for a copy of your request).

### **Your request involves significant resources for the department**

Due to the amount of work involved for the department, under sections 24AA(1)(a)(i), 24 and 24AA(2) of the FOI Act, the department intends to refuse your FOI request as a 'practical refusal reason' exists. Under the Act, the practical refusal reason is that processing your request 'would substantially and unreasonably divert the resources' of this agency.

To process your request the department would have to do extensive searches to identify and process the documents you asked for. Preliminary searches conservatively indicate that the department may hold more than 706 documents, totalling over 1412 pages. I estimate that it would take over 163 hours to process your request.

If you decide not to make any revisions to your request, the department may refuse your FOI request as a 'practical refusal reason' exists.

### **How to send us a 'revised request'**

Before a final decision is made on your request, you can submit a revised request.

Within the next 14 days (consultation period) you must do one of the following in writing:

- withdraw the request;
- make a revised request; or
- tell us that you do not want to revise your request.

If you do not contact us during the consultation period, your request will be taken as having been withdrawn.



If you would like to make a revised request, you could consider:

- Limiting your request to only the most recent example of the particular type of document or scenario that you are seeking information about. For example, the most recent charges notice, the most recent charges decision, the most recent internal review of charges, the most recent external review of charges, the most recent confirmation of payment of charges and so forth.
- Significantly narrowing the date range, for example to within the last 6 months.
- Critically analysing whether you require all the documents you are seeking to satisfy your interests. For example, Part 5 will capture high numbers of email exchanges of an administrative nature in circumstances where notices or decisions already confirm the outcomes in relation to charges.

Once you have considered how to revise your scope, you may also consider it helpful to:

- Settle on a scope omitting extraneous material such as details of your administrative release proposals. For example, if you request access to a 'charges notice' the entire notice is in scope (unless you have specified the use of s22) and it is redundant to specify any 'applicable' inclusions.
- Take note that the FOI reference numbers and dates will be quoted in notices (as above).

#### **Contact officer**

During the consultation period, you are welcome to contact the department to ask for help in revising your request. The contact officer's details are as follows:

Paul  
FOI Officer  
02 6272 4704

[foi@dcceew.gov.au](mailto:foi@dcceew.gov.au).

#### **Further assistance**

If you have any questions, please email [foi@dcceew.gov.au](mailto:foi@dcceew.gov.au).

Yours sincerely

JC

Janet Courtis  
General Counsel  
Corporate, Climate Change and Energy Branch  
Legal Division  
13 November 2024



## ATTACHMENT A

Please find my request below. In addition, please consider my Request for Administrative Arrangements below.

I request access to the following documents under the Freedom of Information Act 1982:

1. All notices of a charge issued to FOI applicants between 1 July 2022 and 5 November 2024.

For the purposes of my request, a “notice of a charge” refers to a “written notice outlining the preliminary assessment of the charge”, as defined by FOI Guidelines [4.9]. Other terms synonymous with this definition include “charge notice” and “charge letter.”

Specifically, I request the following items from charge notices:

- 1.i - That the applicant is liable to pay a charge, the preliminary assessment of the charge and the basis for the calculation (FOI Guidelines [4.54a-b]),

- 1.ii - (if applicable) Any written explanation or justification as to whether the cost of calculating and collecting the charge might exceed the cost to the agency or the Commonwealth (FOI Guidelines [4.114(1)] and [4.4]), and

- 1.iii - The FOI reference number and date of the letter.

To assist with processing, you may omit the rest of the charge notice. I expect details such as applicant information, the scope of their request, and employee names, signatures, and details to be excluded (s 22).

If multiple charge notices were issued for a single request (e.g., following further review or scope reduction), all charge notices are in scope. Final charge notices (issued after a decision is provided (FOI



Guidelines [4.78])) that differ from the previous charge are also in scope.

If your agency administers FOI requests on behalf of another entity (e.g., a minister or departmental sub-branch), such requests are included.

2. All notices of a charge decision issued to FOI applicants between 1 July 2022 and 5 November 2024.

For the purposes of my request, a “notice of a charge decision” refers to a “written notice of decision to the applicant as to whether the charge will be imposed, reduced or waived” as defined by FOI Guidelines [4.14].

Other terms that can be used synonymously include “charge decision notice” and “charge decision letter.”

Specifically, I request the following items from charge decision letters:

2.i - The decision to impose, reduce or waive a charge, as well as the charge amount,

2.ii - (if applicable) Any written explanation or justification as to whether the cost of calculating and collecting the charge might exceed the cost to the agency or the Commonwealth (FOI Guidelines [4.114(1)] and [4.4]), and

2.iii - The FOI reference number and date of the letter.

To assist with processing, you may omit the rest of the charge decision notice. I expect details such as applicant information, the scope of their request, contention reasons, decision-maker explanation of reasons (except part 2.ii), employee names, signatures, and details, or any information derived from the above (such as details about third parties or supporting evidence of a financial hardship contention) are to be excluded (s 22).

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.

Additionally, if multiple charge decision letters have been issued for a single request (e.g., following further review or scope changes), all such letters are included in the scope of this request. Charge decisions made under section 55G of the FOI Act are also included.

3. Any internal review decision letters regarding a charge notice or charge decision between 1 July 2022 and 5 November 2024

Specifically, I request the following items from internal review decision letters:

3.i - The decision to impose, reduce or waive a charge, as well as the charge amount,

3.ii - (if applicable) Any written explanation or justification as to whether the cost of calculating and collecting the charge might exceed the cost to the agency or the Commonwealth (FOI Guidelines [4.114(1)] and [4.4]), and

3.iii - The FOI reference number and date of the letter.

To assist with processing, you may omit the rest of the internal review decision letter, including any background information unrelated to the charge decision. I expect details such as applicant information, the scope of their request, review reasons, decision-maker explanation of reasons (except part 3.ii), employee names, signatures and details, or any



information derived from the above, are to be excluded (s 22).

4. Any external review decisions regarding a charge notice or charge decision between 1 July 2022 and 5 November 2024. This includes decisions not to undertake an IC Review.

I expect details such as applicant information, the scope of their request, review reasons, employee names or details, or any information derived from the above, are to be excluded (s 22) from the scope of my request.

5. All confirmations of payment and refunds between 1 July 2022 and 5 November 2024.

Any document confirming receipt of payment or refund of payment is included in the scope of my request.

To assist with processing, you may omit the rest of the document. Details of the applicant and their payment details are to be excluded (s 22).

If you are willing, I would prefer this information to be provided administratively, such as in an appendix to the statement of reasons or as a note in a schedule of documents. I would like the following information: whether any payment was made, the amount paid, whether any amount was refunded, and the amount refunded for each request. Please let me know if you are willing to pursue this administratively, and I will confirm withdrawing this part (5) of my request.

In addition to the document-specific exclusions listed above, please exclude the following:

i) Any details about FOI applicants, including, but not limited to personal information and supporting evidence of personal circumstances in a financial hardship contention.



ii) Any details about a third party, business, or organisation, including but not limited to their personal information, business information, and commercial affairs.

iii) Any information that may require third-party consultation under the FOI Act.

iv) Any details about any individual, including but not limited to APS staff and signatures.

v) Emails that merely attach charges notices or decision letters.

In many cases, agencies send charge notices and charge decision notices as formal documents (such as PDFs or Word files) attached to an email. The emails themselves typically contain little more than a message like "see attached," and these are not relevant to my request and may be excluded. However, if a charge notice or charge decision is provided directly in the body of an email (without a formal attachment), the email itself would be in scope. In such cases, the content of the email, as it serves the function of the notice, should be included in my request.

vi) Duplicate documents.

vii) Background information unrelated to charges.

#### Request for Administrative Arrangements

In lieu of providing all documents requested in parts 1-3 and part 5, I propose an administrative arrangement. I request a table summarising charge estimates, decisions, internal review decisions#, and payment information between 1 July 2022 and 5 November 2024. The table should contain the following columns:

FOI Reference | Charge Notice Date | Notice Estimate (\$) | Charge Decision



Date | Charge Decision\* | Internal Review Decision Date | Internal Review

Decision\* | Request Status^ | Notes&

# Internal Review decisions that are unrelated to a charge are irrelevant and must not be included.

\* Charge Decision & Internal Review Decision - These should be categorised as:

- (1) Waive
- (2) Reduce – \$(new charge total)
- (3) Affirm
- (4) Deemed Affirm
- (5) Cannot Impose (e.g., when a decision on the request is not made in time)
- (6) Other (for complex cases, with notes).

^ Request Status - Enter as follows:

- (1) Ongoing (still processing or within the 60-day IC Review timeframe)
- (2) Finalised (request is no longer being processed and is outside the 60-day IC Review timeframe)
- (3) External Review (provide OAIC/AATA/FCA/FCAFC reference number)
- (4) Withdrawn
- (5) Deemed Withdrawn
- (6) Other (for complex cases, with notes).

& Notes - Include whether any payment was made, the amount paid, whether any amount was refunded, and the amount refunded. Additionally, if you would like to add any submissions regarding a request you are free to add it here.





If multiple charge notices were issued for a single request (e.g., due to scope reduction), each notice should be a new entry in the table. Please include the reason for additional notices in the Notes section. A ‘final charge’ notice (the actual cost of processing) that differs from the previous charge should also be included as a new entry, with an “actual cost” note.

If you agree to this administrative arrangement, I will confirm withdrawing parts 1-3 (except parts 1.ii, 2.ii, 3.ii) and part 5 of my request. The remaining parts of my FOI request would be:

(Parts 1.ii, 2.ii, 3.ii): Any written explanation or justification as to whether the cost of calculating and collecting the charge might exceed the cost to the agency or the Commonwealth (FOI Guidelines [4.114(1)] and [4.4]), and

(Part 4): Any external review decisions regarding a charge notice or charge decision.

#### Public Interest Factor

I anticipate that some agencies may impose a charge for this request. To pre-empt this, I will provide the following public interest considerations. I allege that some government agencies are incorrectly imposing charges as a means to delay or discourage access to documents, while doing so at a net cost to the Commonwealth. I intend to raise these concerns in a complaint to the OAIC. Your assistance in providing this information will help determine whether your agency is meeting its statutory obligations under the FOI Act.

In *CropLife Australia and Department of Agriculture, Fisheries and Forestry (Freedom of information)* [2024] AICmr 159, the Assistant FOI



Commissioner set aside a charge of \$701, agreeing that access to documents regarding the Department's FOI processes was in the public interest, as it would assist in assessing whether the Department was fulfilling its obligations under the FOI Act.

The Assistant Commissioner, Freedom of Information, noted at [24]:

"where there are concerns about whether an agency is carrying out its statutory obligations appropriately with respect to a particular process (such as under the FOI Act), providing access to documents relating to the conduct of those obligations would go beyond merely enhancing transparency by assisting inquiry into whether the agency is adequately fulfilling those obligations. Accordingly, I accept the applicant's submission that giving access to information that might reveal any deficiencies with respect to the Department's administration of FOI requests under the FOI Act would be in the general public interest."

Thank you for your consideration of this request. Please let me know if you agree to the administrative arrangement at your earliest convenience.

6. A document that identifies whether any FOI requests, where a charge notice was issued between 1 July 2022 and 5 November 2024, were either withdrawn or deemed withdrawn.

To clarify, I am seeking information on whether a request was withdrawn or deemed withdrawn after a charge notice was issued. This may be demonstrated through:

- Correspondence from your agency confirming the withdrawal or deemed withdrawal of a request, or
- The applicant's email confirming their withdrawal of the request.

If no confirmation has been provided by your agency or the applicant, and the request was deemed withdrawn due to non-response to the charge notice, I request that a document be created under section 17 of the FOI Act, which shows that the request was deemed withdrawn. This information is likely to exist in your FOI database or case management systems in electronic form.

To assist with processing, you may omit the rest of the document beyond what is necessary to show whether the request was withdrawn or deemed withdrawn after a charge notice was issued.



**Australian Government**

**Department of Climate Change, Energy,  
the Environment and Water**

If your agency is willing, I would prefer this information to be provided administratively, such as in an appendix to the statement of reasons or as a note in a schedule of documents. Please let me know if you are open to processing this request administratively, and I will confirm the withdrawal of this part (6) of my request.