



6 December 2024

CR

BY EMAIL: foi+request-12305-1bda0aa9@righttoknow.org.au

In reply please quote:

FOI Request: FA 24/11/00381

File Number: FA24/11/00381

Dear CR

Freedom of Information (FOI) request – Decision

On 7 November 2024, the Department of Home Affairs (the Department) received a request for access to document under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following document:

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 7 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 7 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 7 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 7 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 7 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.

6. A document that identifies whether any FOI requests, where a charge notice was issued between 1 July 2022 and 7 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.

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.

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 parts 5-6, I propose an administrative arrangement. I request a table summarising charge estimates, decisions, internal review decisions#, and payment information between 1 July 2022 and 7 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 parts 5-6 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.

On 22 November 2024 you agreed to revise the scope of your request to the following information:

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: (deleted)

Part 6: Whether a request was withdrawn, deemed withdrawn, or neither, exclude everything else

Parts 1.ii, 2.ii, 3.ii: (deleted)

2 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access document or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the document relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the document to which you sought access

4 Document in scope of request

In accordance with section 17 of the FOI Act, the Department has used its computer system to produce one document that contain[s] information that falls within the scope of your request. The data produced in the document existed in the possession of the Department on 7 November 2024 when your FOI request was received.

5 Decision

The decision in relation to the document in the possession of the Department which fall within the scope of your request is as follows:

- Release one document in full

6 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

7 Your review rights

If you disagree with this decision, you have the right to apply for either an internal review or an Information Commissioner review of the decision.

Internal review

If you want the Department to review this decision, you must make your internal review request within 30 days of being notified of this decision.

When making your internal review request, please provide the Department with the reasons why you consider this decision should be changed.

You can send your internal review request to:

Email: foi.reviews@homeaffairs.gov.au

Or

Postal mail:
Freedom of Information
Department of Home Affairs
GPO Box 241 MELBOURNE VIC 3001

The internal review will be carried out by an officer who is more senior than the original decision maker. The Department must make its decision on the review within 30 days of receiving your request for internal review.

Information Commissioner review

If you want the Australian Information Commissioner to review this decision, you must make your request to the Office of the Australian Information Commissioner (OAIC) within 60 days of being notified of this decision.

You can apply for an Information Commissioner review using the [Information Commissioner review application form on the OAIC website](#).

You can find more information about Information Commissioner reviews [on the OAIC website](#).

8 Making a complaint

You may make a complaint to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. This is a separate process to the process of requesting a review of the decision as indicated above.

You can make an FOI complaint to the Office of the Australian Information Commissioner (OAIC) at: [FOI Complaint Form on the OAIC website](#).

9 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.

Yours sincerely,

Electronically signed

Carmen
Position number: 60040191
Authorised Decision Maker
Department of Home Affairs