



Administrative Appeals Tribunal

Principal Registry

FOI ref: 2020/0093

19 October 2020

Mr John Smith

By Email: foi+request-6608-f0371995@righttoknow.org.au

Dear Mr Smith

Notice of charge decision following applicant contention that charge be reduced or not imposed (s 29(8))

I refer to your email of 17 September 2020 in response to the notice that you were liable to pay a charge of the same date. In your email, you requested reduction of the charge on the basis that you believe the time to complete the tasks had been over-estimated and a waiver of the charge pursuant to section 29(5)(b) of the *Freedom of Information Act 1982* (Cth) (**FOI Act**), on the grounds of public interest.

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

I have decided not to vary the original assessment of the charge. The amount you are liable to pay is \$537.00.

The reasons for my decision under section 29(4) of the FOI Act are set out below.

Reasons

Assessment of time to complete your FOI request

On 17 September 2020, you contended that the charge of \$537.00 was wrongly assessed, as there has been an overestimation in the time it would take to complete tasks associated with this FOI request. To date, you have not sought to refine the scope of your request.

According to the FOI Guidelines issued by the Office of the Australian Information Commissioner (**OAIC**), an agency calculates its charge in accordance with Schedule 1 of the Charges Regulation. These charges include:

- Search and retrieval
- Decision making
- Electronic production
- Photocopy
- Delivery.

Search and retrieval

An agency can charge for 'the time spent...in searching for or retrieving the document'.

This includes time spent on:

- consulting relevant officers to determine if and what documents exists;
- searching the digital database to establish the location of a document. This includes individual and team mailboxes, personal computer devices and any documents stored in the back end of the digital database (e.g. deleted or archived emails);
- searching the digital file to locate and retrieve a document; and
- physically locating a digital document and removing it from a file.

The underlying assumption in calculating search and retrieval time is that an agency should maintain a high-quality record system. The AAT maintains such a system suited to its function, which is reviewing administrative decisions and corporate support of that review function.

Search and retrieval time is to be calculated on the basis that a document will be found in the place indicated in the agency's filing system (regulation 5(2)(a)), or, if no such indication is given, in the place that reasonably should have been indicated in the filing system.

I have considered the estimated time needed to search for and retrieve the requested documents and agree with the preliminary assessment of approximately 15 hours. This is based on a search for documents in the place where the documents ought to be, that is, in the official filing system.

You have specifically requested, among other things, a search for the five most recent purchase order documents associated with any tender for APS 4 or below positions at the AAT from Hays. However, you have not indicated a date beyond which no search should be done. In the absence of a refined scope, the agency would have to cast a wide net in order to complete the search of your request.

Further, the searches necessary to respond to your request require the staff members who handled, or are currently handling, procurement and contractual matters between Hays and the AAT to make multiple searches because the information you seek is not contained in single documents and cross referencing of sources is necessary to locate the information. It is not meaningful for the functions of the AAT to store procurement documents by personnel level.

As the exact number of documents required to be retrieved by staff members is unknown, based on previous similar requests, and given that the Tribunal is currently working at a reduced capacity due to the COVID-19 pandemic, the time required for each staff member involved in the search and retrieval of documents within scope is calculated to be 15 hours. This ensures that, searches are thoroughly conducted and there is sufficient time for sorting and assessing emails and other records to facilitate the subsequent decision-making process.

Decision making

An agency can charge for the time spent by the decision maker 'in deciding whether to grant, refuse or defer access to the document or to grant access to a copy of the document with deletions. This includes the time spent:

- examining the document
- consulting with any person or body
- making a copy with deletion
- notifying any interim or final decision on the request

As indicated in our letter to you dated 17 September 2020, documents relating to the procurement of staff services include arrangements for initial service provision and the extensions are in electronic form. It would be necessary for the agency to ascertain, from the searches and retrievals:

- whether or not a particular document concerns initial or continuing arrangements;
- whether or not the services are at APS4 level or below, and
- the relevant date.

Time allocated to decision making involves examination of documents, including reading and reviewing documents, identifying parties who we may need to consult, and deciding whether an exemption applies under the FOI Act.

Contractual and procurement documents between the AAT and external contractors may contain sensitive personal and business information. Your search could require consultation regarding the names and personal information of officers whose services were procured by the AAT, their commencement and end dates of employment and any extension arrangements, and their salary information. Contractual arrangements between Hays and the AAT are likely to contain business affairs information.

This information must be considered under the relevant exemptions in the FOI Act to protect personal privacy and businesses. Although the exact number of documents requiring decision making is yet to be determined, it is likely that some of these contractual and procurement documents have been provided to the AAT by third parties. As such, the agency is required to identify the relevant third parties and to provide them with an opportunity to make submissions. The time allocated to complete this task is approximately 8 hours.

We have also allocated time for the preparation of the notices of access decisions, including proof reading time. A notice of access decision is not restricted to the FOI applicant; it also relates to notices of access decisions to third parties, where the agency has made a different decision than that sought by their submissions. Therefore, the time allocated, includes notifying any interim or final decision on the request, drafting consultation letters, providing documents for release for consultation and drafting notices of decisions regarding third party access after the submissions period has ended. Based on previous similar FOI requests regarding documents containing personal and business information, it takes approximately 8 hours to complete this task.

Waiver

You have also asked that any charges be waived, as you consider release of the documents you have request to be in the public interest.

Section 29(5) of the FOI Act provides that an agency, when determining whether or not to reduce or not impose a charge, must take into account the following:

- (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.

My considerations of these are provided below.

Financial Hardship

As you have not relied on this ground in your request of 17 September 2020, I have placed little weight on this. Without seeing evidence of financial hardship or an argument in support of this contention, I have concluded that the payment of this charge would not cause you financial hardship.

Public Interest

Section 29(5)(b) of the FOI Act requires me to address 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.

In your email of 17 September 2020, you stated that

...this charge should not be imposed or should be nearly entirely waived; on public interest grounds. The public service's outsourcing practices are in the public interest. This is demonstrated by the practices detailed within the requested documents; being the subject of a recent ABC article [link provided] reporting on the APS's labour hire outsourcing

I have considered your FOI request and your assertion that these documents should be released free of charge based on public interest grounds. While information about the public service's general outsourcing practices may be in the public interest, the documents you have requested go beyond establishing these public interest points.

You have requested specifically the contract between AAT and Hays, and the ongoing and completed purchase order documents associated with tender of a certain group of employees from Hays and by the AAT, who filled a role as an APS 4 classification or below. The ABC article publishes information relating to the existence of public service outsourcing practices but does not target specific types of employees within a government organisation.

Accordingly, in relying on s 29(5)(b) public interest grounds, you have not identified the 'general public interest' or the 'substantial section of the public' that will benefit from this disclosure. Whilst the public service's general outsourcing practices may be of interest,

a request confined to one particular labour-hire contractor and purchase order documents relating to employees with certain classifications or positions does not assist in advancing the interests or welfare of the wider public, nor does the content of these documents better inform the public as to why or how a particular decision was made. Your request for documents specifically relating to APS 4 or below does not appear sufficiently representative or throw light on any issues of public debate regarding labour hire services for a substantial section of the public.

For your information, the AAT publishes figures in relation to contractors and consultants in its Annual Reports. It also publishes staffing arrangements under labour hire arrangements and those employed under the *Public Services Act 1999* (Cth) and provides the costs of its contractors separately from those of its staff. The provision of individual contracts which contain personal, business and commercial information would be of little additional value to a substantial section of the public and do not add to any public discussion or assist in providing information to the public about how decisions are made by the AAT.

Decision

For the reasons set out above, I have decided to affirm the original assessment of the charge. The amount you are liable to pay is \$537.00.

As the charge exceeds \$100, a 25 per cent deposit of \$134.00 will be sought if the charge is imposed to process your request.

The deposit is not refundable, except in some limited circumstances (for example, if AAT fails to decide on your request within the statutory time limit) or may be refundable in part if the final charge is less than the deposit paid.

Should you decide to pay the charge, please contact us regarding the method of payment.

Your review rights

If you are dissatisfied with my decision in relation to the charge, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the AAT for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply directly to the Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter.

The OAIC can be contacted by email: foidr@oaic.gov.au.

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to

<https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

Questions about this decision

If you have any questions or wish to discuss this decision with us, please contact me at foi@aat.gov.au.

Yours sincerely,

Angela L

Authorised FOI Officer (APS 6)

Attachments

FOI 2 – Information about reviews and complaints under the Freedom of Information Act