



Australian Government

Department of Health

Department Reference: FOI-**<XXXX>**

<Title> <Name>

<Position>

<Organisation>

<Address?>

<Suburb> <State> <Postcode>

Via email: **<email address>**

Dear **<Title> <Surname>**

Notice Of Decision: Liability to Pay a Charge

I refer to your request of **<date>** to the Department of Health (department) **<on behalf of your client XX>** seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

'<insert exact wording of request>'

On **<date>** you responded to a Notice of Liability to Pay a Charge (charges notice) sent to you by the department, that you contend the charge **<has been wrongly assessed> OR <should not be imposed> OR <should be reduced><(or a combination of)>**.

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

Decision

I am writing to notify you I have decided to waive the charges in full. You are not required to pay any charges and the department's processing of your request will now resume. **<If the charges have already been paid, insert>**. The department will forward a refund of the charges you have already paid.

OR

I have decided to impose the charges in full.

OR

I have decided to reduce the charges by <\$ [figure]> or <[figure] per cent.>

Reasons

In my view, <choose as relevant> imposing the charge would not cause you financial hardship <and/or> the giving of access is not in the general public interest, or in the interest of a substantial section of the public OR there is some public interest in release of the documents of the kind you are seeking access and it is appropriate to reduce the charge, but not waive it altogether.

Financial hardship

<Where the applicant provided evidence of financial hardship, discuss evidence provided by the applicant and the decision in light of Health policy and IC Guidelines>

OR

<Where the applicant has not claimed or provided evidence of financial hardship>. As you have not claimed <and/or> not provided evidence of financial hardship, I find that the charge cannot be reduced or waived on that basis.

The general public interest

<Guidance for decision maker in deciding what to decide/say>

<The following considerations are relevant to the decision whether to waive or reduce a charge or the extent of a reduction.

<Giving of access will be in the public interest where it will be of benefit to the public at large. It is not enough that the information in the documents sought is interesting or of curiosity value to the public at large. It is also not sufficient that the document is of benefit to the applicant.>

<Prima facie position>

<Charges should fairly reflect the work involved in providing access to documents on request (IC guidelines at [4.5]).>

<The prima facie position is that charges should be imposed 'so that applicants contribute to the cost of processing all their requests.' (Re Herald and Weekly Times & Department of Finance and Administration [2000] AATA 506 at [47]). <The following FOI Act provisions affect imposition of charges:>

- <section 3(4) of the FOI Act provides that the functions and powers under the FOI Act should be 'performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.'>
- <the first five hours of decision-making are now free>
- <charges cannot be imposed when an agency fails to meet its statutory deadline for decision-making.>

<Identifying the public interest>

<Consider the content of the documents and the context of their public release>

Is the subject matter a matter of public interest? Will disclosure facilitate access by the public generally or by a substantial section of the public?

<Identify the 'substantial section of the public' that would benefit from disclosure.>

<Does the information have a demonstrable benefit to the general public or a substantial section of the public? >

<Giving of access will be in the public interest where it will be of benefit to the public at large. It is not enough that the information in the documents sought is interesting or of curiosity value to the public at large. It is also not sufficient that the document is of benefit to the applicant.>

<What particular benefits or interests is the applicant relying on? Apart from those identified by the applicant, what particular benefits or interests can you identify?>

<Is the information in the documents already publicly available?

<How current is the topic of public interest?>

<The special interest the applicant has in the documents is not sufficient to meet the public interest test. Discuss whether the documents sought would have value to the general public, or at least a substantial section of it, rather than just to the applicant.>

<Likelihood that the information will reach the general public or the identified substantial section of the public>

<Will the information be disseminated more widely to the public and therefore assist public comment on the information or increase participation in debate and discussion?>

<Will the applicant's position (e.g. as a journalist or a member of parliament) provide the applicant with a platform to disclose the information to the public? > (*Tennant and Australian Broadcasting Corporation* [2014] AATA 452 at [36]).

<It is not sufficient *per se* that the documents might form the basis of a media article as not all articles will be published. (*Ben Butler and Australian Securities and Investments Commission (Freedom of Information)* [2017] AICmr18 at [27]; *Associated Press Pty Ltd and Department of Immigration and Border Protection* [2016] AICmr 54 at [22].>

<The disclosure log requirements should make an agency more inclined to conclude that a document disclosure would be in the public interest (*Besser and Department of Infrastructure and Transport* [2011] AICmr 2 at [18]).>

<How much of the information already in the public domain?>

Is the information in the documents or some of it in the public domain? If so, you may consider a charge that would reflect the part of the cost of processing the FOI request that relates to the documents that are already publicly available.

Is the full range of documents requested by the applicant demonstrably beneficial to the general public or a substantial section of the public?

Is the full range or volume of documents necessary to inform public debate etc?

Is the applicant willing to reduce the scope of the request?

<Compare the volume of documents and processing costs against the subject matter of the request: see *Australian Associated Press Pty Ltd and Department of Immigration and Border Protection* [2016] AICmr 54 at [32-33].>

<See also: *Tennant and Australian Broadcasting Corporation* [2014] AATA 452 at [47].>

<Benefit to the applicant>

<Will the applicant derive a benefit from disclosure? For instance, consider the commercial or personal benefit to be derived by a journalist or the commercial benefit to be derived by a media organisation from publication (*Ben Butler and Australian Securities and Investments Commission (Freedom of Information)* [2017] AICmr18 at [27]).>

<There is no 'presumption' that a journalist or media organisation will necessarily derive a professional or commercial benefit (*Associated Press Pty Ltd and Department of Immigration and Border Protection* [2016] AICmr 54 at [21])>

Decision not to waive in full

If the application for waiver or reduction is declined, the statement of reasons for decision must adequately explain why it is appropriate for the charge to be imposed in the circumstances

<Search and retrieval of documents>

<The Department may incur significant time in searching for and retrieving documents to meet the freedom of information request. Where some of the information is available to the applicant without having to make a freedom of information request, it may be only fair that the applicant should bear the costs of search and retrieval of those documents See: *Tennant and Australian Broadcasting Corporation* [2014] AATA 452 at [47].>

<Whether the agency has an efficient records management system is an important consideration:>

<An applicant should not be prejudiced if an agency's inefficient records management system increases the time for search and retrieval. An estimate of search and retrieval time where the difficulties in locating documents stem from the agency's own inefficient filing does not represent the lowest reasonable cost (*Besser*

and Department of Infrastructure and Transport [2011] AICmr 2 (17 March 2011) at [18]).>

<Other considerations>

<Would the imposition of the charge be at odds with the lowest reasonable cost objective of the FOI Act?>

Take into account the frequency of the applicant's requests for documents.

<How complex is the FOI request?>

<A charge must not be used to discourage an applicant from exercising the right of access conferred by the FOI Act.>

<You may wish to use the following text as a template for the 'Public Interest' section of the decision. Add to or subtract from it as considered appropriate:>

Whether disclosure is in the general public interest requires consideration of whether disclosure of the document would benefit the public. In considering this, I have taken into account the following factors in favour of disclosure:

- The public interest in persons exercising their right to access information in the possession of government as recognised in the FOI Act;
- The public interest in promoting accountability and transparency in government operations;
- Whether the documents relates to a matter of public debate, the disclosure of which would assist public comment or participation;
- The document is used by a community or not-for-profit organisation in preparing a submission to government;
- <others relevant - see also the Objects of the FOI Act - section 3, and the OAIC's Guidelines on Charges (Chapter 4).

I have taken into account the following factors which suggest disclosure would not benefit the public:

- The risk of prejudice to the government's capacity to effectively and efficiently undertake its functions if the information disclosure;
- <others relevant, for example, the need to protect the confidentiality of cabinet deliberations, the need to protect the privacy of individuals whose personal information is contained in documents in the possession of government agencies, the risk of damage to the Australian Government's relationship with foreign states or Australia's States or Territories>.

On balance, I consider that there <is/is not> sufficient public interest in disclosure of the document/s to justify remitting <\${figure}/ [figure]%/ any> of the charges on this basis. I note that my decision on public interest goes only to the question of whether the charges should be imposed, and not to the issue of whether the documents should ultimately be disclosed.

<if relevant> *Other relevant factors*

As Decision Maker, I can take into account any other factor I consider relevant. <see section 29(5) and OAIC Guidelines. If any have been influential in your decision, refer to them here. Some other factors could include whether the applicant any other related party will derive a financial benefit from disclosure, whether the request is simple or requires consideration of only a few documents, whether the applicant substantially reduced the scope of the request>.

Effect of my decision <use only if a decision is made to impose charges>

My decision means you are required to pay a charge of \$[figure]. <If charges outstanding insert>. Before the processing of your request may continue to be processed, you must pay a deposit of \$[figure].

** <if the amount of the charge exceeds \$100 insert a \$ amount representing 25% of the total charge>

** <if the amount of the charge is between \$25 and \$100 insert '\$20'>

**<if the amount of the charge is less than \$20, delete 'a deposit of' and insert the full amount of the charge 'you must pay \$...'>.

Please note that until you pay \$..., your request remains on hold. The processing of your request will resume upon payment of that amount. Please note that, when a decision is made on your request, you will not receive access to any documents the decision-maker decides to release to you until the balance of the charge is paid.

<Remove the last sentence where the charge is less than \$20 >

If, within 30 days from the date of this notice, payment of \$... is not received or you have not sought a review of my decision, your freedom of information request will be considered to have been withdrawn.

Where you choose to pay by cheque (personal or bank) or money order it should be sent to the following:

Mail: FOI Unit (MDP 516)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

Where you wish to pay by credit card you should contact the department's FOI Unit on (02) 6289 1666 to be further advised.

Access to documents released to you under this decision will be provided when the balance of the outstanding charges is received and receipted by the department.

Review rights <insert this heading and the next two sentences where at least part of a charge is still imposed>

Pursuant to s 53A(e) of the FOI Act, a decision under s29 relating to the imposition of a charge or the amount of a charge is an access refusal decision.

You have a right to seek **<an internal review or [if relevant]>** Information Commissioner Review of the access refusal decision. The decision-maker on review can decide whether the charge was correctly assessed, and whether it should be reduced or waived.

<if relevant> Internal review

Under section 54 of the FOI Act, you may apply in writing to the department for an internal review of my decision. The internal review application must be made within 30 days of the date of this notice (or such further period as the department allows). Where possible please provide reasons why you consider review of the decision is necessary. The internal review will be carried out by another officer of this department within 30 days. An application for an internal review should be addressed to:

Email: FOI@health.gov.au

OR

Mail: FOI Unit (MDP 516)
Department of Health
GPO Box 9848
CANBERRA ACT 2601

Information Commissioner Review

Section 54L of the FOI Act provides that you may apply to the Australian Information Commissioner to review my decision. An application for review must be made in writing within 60 days of this notice.

The Australian Information Commissioner can be contacted by:

Email: enquiries@oaic.gov.au
Phone: 1300 363 992

More about the Information Commissioner review is available on the Office of the Australian Information Commissioner (OAIC) website at:

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

You may also make a complaint to the Information Commissioner about action taken by the Department in relation to your application. Further information can be obtained from the OAIC website.

Relevant provisions

The FOI Act, including the provisions referred to in this letter, can be accessed from the Federal Register of Legislation website:

<https://www.legislation.gov.au/Details/C2019C00288>

Publication

You should be aware that where I have decided to release documents to you, the department may also publish the released material on its Disclosure Log. The department will however, not publish information (such as personal or business information) where it would be unreasonable to do so.

For your reference the department's Disclosure Log can be found at:

<https://www.health.gov.au/resources/foi-disclosure-log>

Contacts

If you require clarification of any of the matters discussed in this letter you should contact Freedom of Information Unit on (02)6289 1666 or at FOI@health.gov.au

Yours sincerely

<Decision Maker>

<Position>

<Branch>

<Date>

This document was released under
the Freedom of Information Act 1982
by the Department of Health