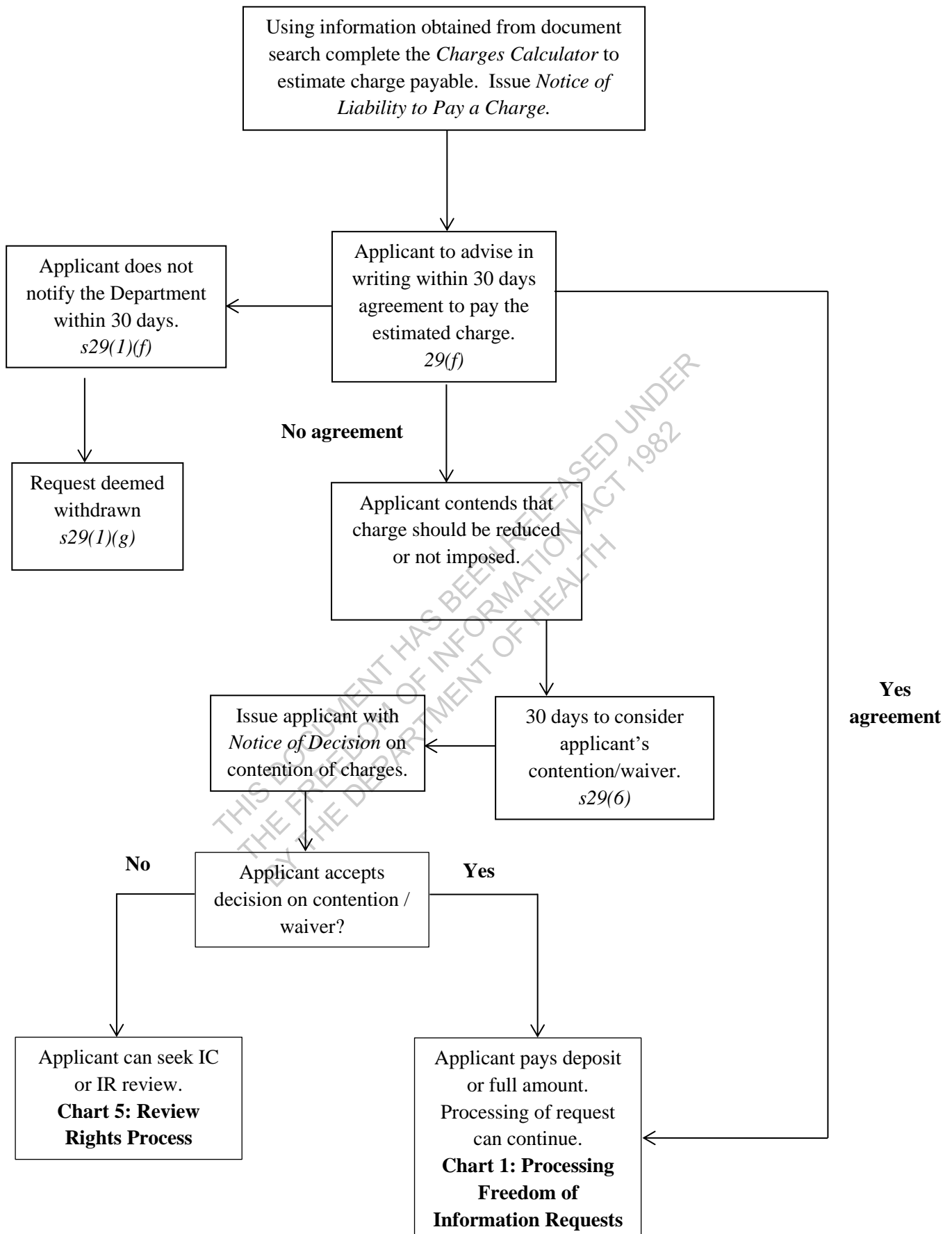


CHART 4: Charges



COMPLEX ELECTRONIC

FOI CHARGES ESTIMATE TOOL - COMPLEX ELECTRONIC

(insert data in shaded boxes only)

GENERAL DATA ESTIMATE

(terms in red are explained on the notes sheet)

Hits returned to consider for relevance

Percentage (approx) of hits which are relevant

Number of discrete relevant documents

Percentage (approx) of relevant pages to disclose in whole

Percentage (approx) of relevant pages requiring redaction

Percentage (approx) of content that is applicant's own personal information

Number of third parties to consult

in A4 pages

PROCESS - search and retrieval

TIME per task

charge time:

COST @ \$15 per hr

Time required to execute searches - enter hours (including part hours eg 0.5)

0.00

\$0.00

Examining hits to identify relevant documents - enter minutes per 10 pages

0.00

\$0.00

Collating bundle of relevant documents - enter hours

0.00

\$0.00

Preparing schedules detailing all relevant documents (basic data entry eg doc no, date, description) - enter minutes per 10 documents

0.00

\$0.00

Search & Retrieval Subtotal

0.00

\$0.00

PROCESS - decision-making

TIME per task

charge time:

COST @ \$20 per hr

Examine relevant pages for decision making - enter minutes per page

0.00

\$0.00

Redacting pages that are partially disclosed - enter minutes per page

0.00

\$0.00

Consult third parties - enter average per third party in hours

0.00

\$0.00

Preparation and notification of decision

Writing statement of reasons - enter hours

0.00

\$0.00

Complete schedule by recording decision @ 4 documents per minute

0

\$0.00

Decision-making Subtotal (before deduction of 5 hours)

0.00

\$0.00

Decision-making Subtotal (after deduction of first 5 hours free for all)

0.00

0

ACCESS - view / inspect

TIME per task

charge time:

COST @ \$6.25 per 1/2 hr

Supervised inspection of documents - minutes per page

0.00

0.00

Supervised inspection of audio/visual material - insert total duration of material in minutes then add 30 mins set-up and pack-up time

0.00

0.00

Inspection/Viewing Subtotal

0.00

0.00

\$0.00

ACCESS - copy and post

PAGES

COST @ 10c a page

Photocopies of estimated released pages (including those with deletions) - set to 0 if providing electronically

0

\$0.00

Electronic media (eg USB drive, CD-ROM) and/or postage - insert estimated cost of materials

Access Subtotal

\$0.00

ESTIMATED TOTALS

NUMBER OF RELEASED PAGES

0

TIME (in hours)

0.00

TOTAL COST

\$0.00

Financial hardship/public interest discount (as %)

0%

\$0.00

TOTAL COST (after discount)

\$0.00

MAXIMUM DEPOSIT

N/A

USING THIS TOOL

This tool assists in generating an estimate but should not be considered definitive or binding. The Office of the Australian Information Commissioner has emphasised the need for agencies to base estimates on a reasonable sampling of relevant documents to ensure that appropriate assumptions are used to generate estimates for charging purposes. Some IC review decisions suggest a sample of 10-20% would be 'reasonable'.

FOI CHARGES ESTIMATE TOOL - SIMPLE

(insert data in shaded boxes only)

GENERAL DATA ESTIMATE

(terms in red are explained on the notes sheet)

Pages (approx) of material in scope

Number of discrete relevant documents

Percentage (approx) of pages to disclose in whole

Percentage (approx) of pages requiring redaction

Percentage (approx) of content that is applicant's own personal information

Number of third parties to consult

PROCESS - search and retrieval

TIME per task

Time required to execute searches - enter hours (including part hours eg 0.5)

Preparing schedules detailing all relevant documents (basic data entry eg doc no, date, description) - enter minutes per 10 documents

Search & Retrieval Subtotal

PROCESS - decision-making

TIME per task

Examine relevant pages for decision making - enter minutes per page

Redacting pages that are partially disclosed - enter minutes per page

Consult third parties - enter average per third party in hours

Preparation and notification of decision

Writing statement of reasons - enter hours

Complete schedule by recording decision @ 4 documents per minute

Decision-making Subtotal (before deduction of 5 hours)

Decision-making Subtotal (after deduction of first 5 hours free for all)

ACCESS - view / inspect

TIME per task

Supervised inspection of documents - minutes per page

Supervised inspection of audio/visual material - insert total duration of material in minutes then add 30 mins set-up and pack-up time

Inspection/Viewing Subtotal

0.00

ACCESS - copy and post

Photocopies of estimated released pages (including those with deletions) - set to 0 if providing electronically

Electronic media (eg USB drive, CD-ROM) and/or postage - insert estimated cost of materials

Access Subtotal

ESTIMATED TOTALS

NUMBER OF RELEASED PAGES

TIME (in hours)

TOTAL COST

Financial hardship/public interest discount (as %)

TOTAL COST (after discount)

MAXIMUM DEPOSIT

USING THIS TOOL

definitive or binding. The Office of the Australian Information Commissioner has emphasised the need for agencies to base estimates on a reasonable sampling of relevant documents to ensure that appropriate assumptions are used to generate estimates for charging purposes. Some IC review decisions

January 2017 edition

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NOTES TO FOI CHARGES CALCULATOR

Term	Explanation
Hits returned	Initial searching usually returns more documents than are relevant to a request. For example, an electronic search using keywords will often return false positive results. Similarly, a hard copy file with a relevant title will often contain documents not caught by the terms of the request. A 'hit' is a page that needs to be manually assessed for relevance, even if ultimately be ruled outside of scope. For audio/visual material you can convert time to pages - a suggested conversion is 3 mins of material = 1 A4 page equivalent. In some instances, the pages of a 'hit' may be an estimate (for example, where lengthy email chains are involved or other document where a page count is not immediately identifiable).
In A4 pages	To estimate the volume it is necessary to take a common denominator. This tool uses A4 page equivalency. It may be necessary to sample some hits to derive an average document size
Relevant	This is the number of pages remaining after reviewing the hits and removing irrelevant pages. These are the pages that the decision-maker will need to consider in terms of release or exemption.
Documents	For some purposes (ie scheduling) the number of documents is relevant. This is regardless of the length of the document.
Redaction	The process of blocking out parts of a document using redacting software or a manual process.
Own personal information	An agency may not charge a person for accessing personal information about themselves. Where a request seeks access in part to the applicant's personal information and in part to other information, it is permissible to charge for the balance of the request. The tool calculates the total cost of processing the request and then deducts the percentage of personal information from the total. The <i>Freedom of Information (Charges) Regulations</i> allow agencies to charge for the time spent 'in consultation with any person or body'. Where third parties, including other Commonwealth agencies, are consulted on a request the agency may charge this as part of its decision-making time. Time taken to consult with a third party will be context-specific. It includes time taken to prepare correspondence for the third party and time taken in discussion with the third party. As a general guide, allow up to 2 hours for a typical consultation with a non-government third party. Government third parties typically require less assistance to understand the FOI Act and so may require less time depending on the circumstances.
Third parties	
Inspection	Under the charges regulations, inspection time is for each half hour or part thereof. The tool rounds up to the nearest half hour for inspection time.
Discount	The OAIC Guidelines explain the circumstances in which a charge might be discounted for financial hardship or public interest reasons. Agencies have a broad discretion to reduce/waive charges for other reasons, as well as a discretion not to impose a charge at all.

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SHARED SERVICES FINANCE PROCEDURES

1.11 Freedom of Information (FOI) RECEIPTING

Department of Health

*Better health and wellbeing for all Australians,
now and for future generations.*



Australian Government

Department of Health

Contents

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Version History

The following table shows the version history for this document:

Version	Date	Author(s)	Description of Change
0.1	01.06.2018	s47E(c) s47E(d) s47F	Update Template
0.2	05.08.2019	s47E(c) s47E(d) s47F	Updated information
0.3			
1.0			

Reviewed By

The following table lists the reviewers for this document:

Name	Role	Group/Organisation	Date
s47E(c) s47E(d) s47F	Manager AR	FMD SSC	19.8.2019

Introduction

Procedure Statement

This procedure sets out the expectations, roles, responsibilities, rules and guiding principles to Freedom of Information (FOI) receipting.

Procedure Purpose

The purpose of this document is to detail the process of performing the FOI receipting function.

Procedure Ownership

The owner of the Receipting Procedures is the Shared Services Centre Accounts. The ongoing review and maintenance is delegated at the owner's discretion.

Procedure Audience

This procedure covers all FOI receipting activities as undertaken by the Collector of Public Monies., Accounts Receivable, Shared Services Centre.

Aim

This procedure defines the steps to be taken to receipt FOI payments. The objectives of this procedure are:

- Produce a receipt for a FOI payment

Procedure overview and scope

The purpose of this document is to provide a detailed work instruction on how to perform receipting of a FOI payment.

Frequency and Timing

Procedure Frequency: As required

Procedure Timing: As required

Procedure

FOI payments are generally made by credit card and occasionally by cheque. These are provided from LSB s47E(c) s47E(d) s47F FOI receipts are departmental and are considered Section 31 revenue.

Transaction Code:	s47E(d)
Menu Path:	s47E(d)

The **"Post Incoming Payments: Header Data"** screen will be displayed

Document Date	CHQ	= Date received
---------------	-----	-----------------

	CC	= Date processed through EFTPOS machine
Company Code	1000	= Departmental
Posting Date	This date should match the Document date.	
Period	This will default to the current period – this would only be changed when receipting for the last day of the month when you would adjust to the prior period	
Reference	CHQ	= Cheque
	CC	= Credit Card
Doc. Header Text	CHQ = 7 spaces then name of payer CC = 7 spaces then name of payer	
Clearing Text	Enter the FOI Number as provided on documentation	

Post Incoming Payments: Header Data

Process open items			
Document Date	05.08.2010	Type	DZ
Posting Date	05.08.2010	Period	2
Document Number		Company Code	1000
Reference	CHQ	Currency/Rate	AUD
Doc. Header Text	s47E(d)	Translatn Date	
Clearing text	s47E(d)	Cross-CC no.	
		Trading part.BA	

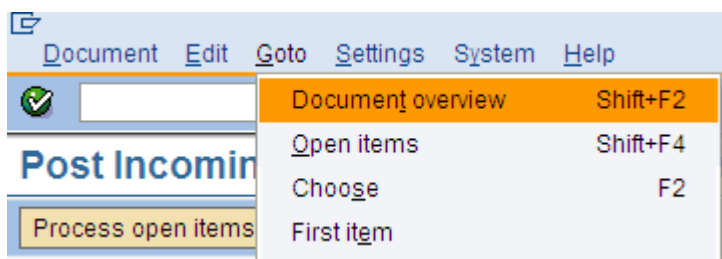
BANK DATA

Account	s47E(d)
Amount	Enter the amount of the payment
Value date	This field will default to today's date
Text	Copy Text from above
Assignment	CHQ - Enter the cheque number CC – Enter Card number

Bank data	
Account	s47E(d)
Amount	
Bank charges	
Value date	
Text	
Business Area	s47E(d)
Amount in LC	
LC bank charges	
Profit Center	
Assignment	

BANK ACCOUNT GL IS s47E(d) FOR CREDIT CARD PAYMENTS

From the menu select Go to, from the drop down select Document overview:



The **"Post Incoming Payments Display Overview"** screen will be displayed:

OTHER LINE ITEM

PstKy	s47E(d)
Account	CO-9001

s47E(d)



The **"Post Incoming Payments: Address and bank data"** screen will be displayed:

Enter the name and address details as provided on the paperwork from the FOI section.

Customer	C0-9001	DEPT - ONE TIME CUSTOMER	G/L	s47E(d)
Company Code	1000	Health - Departmental		

Item 2 / Business partner data	
Title	s47E(d)
Name	
Street	
PO Box	
City	
Country	
Language Key	EN
PO Box PCode	s47E(d)
Postal Code	
State	

Press ENTER

The **"Post Incoming Payments Add Customer Item"** screen will be displayed:

ITEM 2/INCOMING PAYMENT / 15

Amount	Enter the value of the payment
Text	Enter text; or Enter + and this will copy text previously entered; or Copy and paste previous text.

Press "ENTER" and the text field will be populated.

s47E(d)



To display the document to ensure that the DR and CR values are the same.

The **"Post Incoming Payments Display Overview"** screen will be displayed:

The Debit and Credit values should be the same and the **Blue** amount at the bottom should be zero

Post Incoming Payments Display Overview

Process open items | Choose open items | Display Currency | Acct model | Taxes

Document Date	s47E(d)	Type	s47E(d)	Company Code	s47E(d)
Posting Date		Period		Currency	
Document Number		Fiscal Year		Translatn Date	
Reference	s47E(d)			Cross-CC no.	
Doc.Header Text				Trading part.BA	

Items in document currency

s47E(d)

s47E(d)

0.00 * 2 Line items



A message will be displayed at the bottom of the screen showing the receipt number:

s47E(d)

Record the receipt number on the top right hand corner of your hardcopy paperwork.

This receipt transaction has posted a credit entry against the customer record:

s47E(d)

Print and check the receipt if a request has been made for one.

This credit now needs to be cleared.

To clear credit go s47E(d) :-

Clear Customer: Header Data

Process Open Items

Account	CO-9001	Clearing Date	05.08.2019	Period	2
Company Code	1000	Currency	AUD		

Open Item Selection

Special G/L Ind	<input type="checkbox"/>	<input checked="" type="checkbox"/> Standard OIs
-----------------	--------------------------	--

Additional Selections

- ☐ None
- ☐ Amount
- ☒ Document Number
- ☐ Posting Date
- ☐ Dunning Area
- ☐ Reference
- ☐ Document Type
- ☐ Posting Key
- ☐ Document Date
- ☐ Assignment
- ☐ Profit Center
- ☐ Others

Type in the customer number in the account field – ie CO-9001. Clearing date will be the date you are clearing the account – ie 05.08.2019. Company code will be 1000.

Under the Open Item Selection – Special G/L Ind is left blank.

Additional Selections – select Document Number then press enter or click on Process Open Items.

The “Clear Customer Enter Selection Criteria” will be displayed:-

Clear Customer Enter selection criteria					
Other selection		Other account		Process Open Items	
Parameters entered					
Company Code	1000				
Account	CO-9001				
Account Type	D				
Special G/L ind.					<input checked="" type="checkbox"/> Standard OIs
Document Number					
From		To		String	Initial value
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>		<input type="text"/>		<input type="checkbox"/>	<input type="checkbox"/>

Enter in the document number that needs to be cleared, then click on the Process Open Items Icon. This will take you to the “Clear Customer Process Open Items” screen. At this screen the

s47E(d)

Click on the "Charge off diff" icon.

On the other line item, enter in the Pstky of 50 & Account is the G/L provided on the form, then press "enter".

s47E(d)

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The "Clear Customer add G/L Account Item" will be displayed. In the amount section, enter in the amount of the FOI to be cleared, followed by the tax code of S5. In the Profit Centre add the number in that has been provided by FOI, in the Text screen enter the * followed by the FOI Number – s47E(d) .

Click on the save icon. This will generate a clearing number starting with "16". Take note of this number on the form. Go into CO-9001 to confirm that the amount has cleared successfully.

Post receipt to FOI@health as per FOI form

1.

Roles and responsibilities

Role	Responsibility	Dependencies

Risks

-

Related Documents, Legislation, Policy and Advice

Name	Link	Version

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FOI GUIDELINES ON CHARGES

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OVERVIEW OF CHARGES

Processing charges

- Charges are to be issued within the first 2 weeks of processing.
- The charges are fixed by the Regulations.
- Charges may be reduced or not imposed where relevant grounds are established.
- Charges may be reduced in full or in part.
- Charges are imposed on the basis of estimated processing and decision making time (including taking into consideration how complex or technical the information is), the number of documents and pages, and whether any third parties are to be consulted.
- Notification to the Applicant of an estimate of charges is required and Applicant must be given an opportunity to contest the amount or seek for the charges to be reduced or not imposed on relevant grounds.
- A request may be withdrawn after Notification, or is deemed to be withdrawn if there is no response to the Notification from the Applicant.
- Charges estimate should be adjusted in some circumstances.
- A deposit is to be required before further processing of request.
- Decisions in relation to charges should be made only by authorised officers.
- An estimate of charges is not to be used to inhibit Applicants from making FOI requests for access to documents and the estimate should be at the lowest possible cost under the FOI Act.
- No GST is payable on charges.
- Applicants should not be penalised for the record-keeping deficiencies of the department.
- Material may be made available administratively outside the FOI Act at no charge.
- Charges are not to be imposed for requests for personal information.

Review of decisions to impose charges

All charging decisions and waiver decisions are subject to internal and OAIC review.

Generally processing charges are imposed by the department for any FOI request. However, the exceptions to this general rule are:

- where the imposition of charges would cause financial hardship;
- where the giving of access is in the general public interest;
- requests involving the Applicant's personal information; or
- any other relevant reasons.

In addition, there are provisions exempting access to an Applicant's own income support documents from charges.

The department should bear in mind that the FOI Act involves the exercise of discretions. The discretions, as conferred by the FOI Act, should be exercised, where possible, in order to facilitate and promote the prompt disclosure of information at the lowest reasonable cost. Charges should not be used to discourage Applicants from exercising their right of access under the FOI Act.

Table 1: Charges

Search and retrieval time	\$15.00 per hour
Decision-making time	\$20 per hour

Table 2: Deposits may be charged

Where the charges under (b) above exceed \$25.00 but do not exceed \$100.00	\$20
Where the charges under (b) above exceed \$100.00	25% of the preliminary assessment

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HOW TO CALCULATE CHARGES

Preliminary assessments of charges

Where the department decides that the Applicant is liable to pay a charge in respect of the processing of a request, the department must send a Notice of liability to pay a charge (if possible before the time it sends the acknowledgment of request) containing the following information.

- The Applicant is liable to pay a charge.
- The department's preliminary assessment of the charge and the basis of that assessment (for example, how many hours of work are estimated to be involved and the relevant charging rate under the Regulations) involves the search and retrieval time and decision making time.
- Search and retrieval time is the time spent locating relevant files and collating relevant documents contained on those files.
- Decision making time the time spent examining the documents, considering exemptions, undertaking consultation, writing the decision and preparing any documents for release.
- The Applicant may agree to pay the charge as assessed.
- Alternatively, the Applicant has a right to argue that the department has wrongly assessed the charge, or should exercise its discretion to reduce or not impose the charge. The Applicant must state the reasons for arguing these points.
- The Applicant may withdraw the request.
- In exercising its discretion whether to reduce or not impose a charge, the department will have regard to all relevant reasons, but in all cases it must consider whether the full charge would cause the Applicant financial hardship and whether disclosure of the documents as a whole would be in the public interest. The fact that the Applicant has requested access to documents containing personal information about her or him may be a relevant, but not conclusive, consideration.
- The Applicant is liable to pay the amount of the deposit where a charge is imposed before the request continues to be processed as per the FOI Guidelines (Part 4.66 of Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982).
- The Applicant has 30 days to advise the department of their response and that the request will be taken to have been deemed withdrawn if no response is received within that time.

Stopping the clock

- When an Applicant receives the Notice of liability to pay a charge with the estimate of charges, the 30 day time limit for notification of a decision on the access request stops.
- If the Applicant fails to respond within 30 days, the request is treated as deemed withdrawn and the Applicant is not liable for any charge.
- If the Applicant asks the department to exercise its discretion to reduce or not impose the charge, the department has 30 days to notify the Applicant of its decision. An Applicant may withdraw the request if the department decides that there are insufficient grounds to justify a decision to reduce or not impose a charge.
- If the department decides to impose the charge, the department must notify the Applicant of that decision and the department is awaiting payment of a deposit to continue processing the request. The clock starts again on the 30 day time

frame for processing the request, on the following day that the Applicant pays the deposit. The Applicant has a right to seek internal review or OAIC review of the decision to impose the charge.

Once the department has completed the processing of the request, it should revise its assessment of the charge payable by the Applicant based on the actual amount of work involved in the request. If the department refuses access to any of the documents, the charge can be less, but not more than, the department's preliminary assessment. The department then notifies the Applicant of its decision in respect of release of the documents and seeks payment of the balance of the charge before access is granted.

[Explanation of charges](#)

[Documents containing personal information](#)

There is no charges imposed for personal information documents (section 7(1) of the regulations). However if the documents captured in the scope of the request include other documents that do not contain personal information or contains personal information about an individual written by a third party, an estimate of charges on these documents may be imposed.

[Charges for work already done and estimated charges](#)

When the department makes a decision to impose a charge, the charge will be made up of:

- a charge for work already done (search and retrieval); and/or
- an estimate of a charge for work still to be done (decision-making).

Estimates of charges are based on time and processes likely to be involved in processing and finalising a request. Estimates may be made:

- *in respect of the request*, that is, for any further action estimated to be required to make a decision whether to grant access (including third party consultation);
- *in respect of the provision of access*, that is, charges estimated to apply if access were to be provided.

In estimating the time for search and retrieval of documents:

- the department relies on the estimated average time spent by departmental officers in locating documents in response to FOI requests.
- if a document is not easily located in the department, further IT and TRIM searches with specific parameters can be requested.
- an informal consultation with the Applicant may assist with providing further information for the department to conduct searches and clearly identify documents.
- estimated average times for decision-making may be relied on by Decision Makers in making decisions on access to the documents outlined in the schedule of documents. Applicants should not be penalised for poor record keeping practices of the department

Calculating search and retrieval time

The term '*time spent in searching for or retrieving*' a document encompasses time spent:

- in searching TRIM to establish the location of a document (whether that is done manually or by IT Service Desk);
 - in locating and retrieving the document from TRIM or other place where it is held i.e. Records Management;
 - in reviewing the document to confirm the document is captured in scope of the request; and
 - liaising with other departmental officers or likely areas of the department whether further documents may be held.
- Generally, the time to be taken into account is the time actually spent by a departmental officer on completing searches.
 - This information is to be recorded on a search & retrieval form and saved in TRIM. I
 - If more than one area of the department completed searches in relation to a request, each area needs to complete a search & retrieval form.

Search & Retrieval time

Once an agreed upon interpretation by the Decision Maker, Action Officer and the documents can be identified, reasonable searches are conducted to retrieve documents. The amount of time spent in search & retrieval of documents is based on the hours provided in the completed search & retrieval form as well as any further searches completed by IT Service Desk for documents located in TRIM, Records Management and IT Security for emails held by employees who are no longer employed by the department. Searches involving telephone recordings, text messages and data will require further consideration of processes to be completed and be approved by the Decision Maker. Poor record keeping is not a relevant factor in not being able to locate or retrieve documents that fall within scope of the request.

Decision-making time

Decision-making time includes time spent on any of the following matters:

- reviewing the documents;
- consulting with any individuals, organisations or State/Territories;
- redactions and exemptions applied to the documents;
- include parts of the calculator that refer to the decision making time e.g. the time spent to prepare the statement of reasons.

Decision-making time does *not* include courtesy consultations required for documents held in the department's possession that were provided by other Commonwealth agencies.

Justification of time

Justification of time includes:

-

Consultation with Applicants about fees and charges

- Where charges are likely to be high such as where there is a high volume of documents within the scope of the request: the department can informally consult with Applicants about the possibility of reducing charges by reducing the scope of the request, preferably before a formal decision is made, advising them of their liability to pay charges.
- The department is obligated to help Applicants focus their request on the documents they really want and assist the Applicant by providing suggestions on how to further reduce the scope of their request.
- Consulting at an early stage in the evaluation process has the benefit of providing the Applicant with an opportunity to reconsider the scope of their request.
- The Applicant may then choose to proceed or, alternatively, refine or withdraw the request. Informal consultation with the Applicant will also allow the department to plan our resources for the purpose of processing the request.

Deposits

A deposit may be required where the charge involved in responding to a request is estimated to exceed \$25, and where some assurance is required that the ultimate charge will be paid, so that the expenditure of resources will not be wasted.

The department has a discretionary power to require the payment of a deposit of up to \$20 (for charges between \$25 and \$100) or 25% of the fixed charge (for charges over \$100) (section 12 of the Regulations). The department may suspend work in regard to the access decision, pending receipt of the deposit.

The department can make full use of the deposit provisions. Where estimated charges exceed \$25, the department should generally seek payment of a deposit and notify the Applicant:

- of the amount of the deposit and the estimated total charges (section 12(1) of the Regulations and section 29(1) of the FOI Act);
- that the Applicant is not entitled to have access to any document to which access might be given, unless, and until, all charges to be paid (including the deposit) have been paid in full.

An Applicant may within 30 days:

- agree to pay the deposit or charge;
- contend that the charge has been wrongly assessed and request that the charge should be reduced or not imposed;
- withdraw the request for access.

Adjustment of estimate of charge fixed under section 9 — section 10 of the Regulations

Adjustment to the charge for processing a request may be made if the actual charge varies from an estimated charge provided to an Applicant.

- A refund must be made if any deposit, or other payment already made by the Applicant, exceeds the actual charge of processing the request.
- Early consultation with an Applicant is essential to ascertain whether particular documents are really wanted by an Applicant before the Applicant is required to pay a large sum.
- The Applicant should be consulted and given the option to revise the request if a charge fixed under section 29 of the FOI Act and section 9 of the Regulations is likely to be significantly high in cost.

Section 10(5) of the Regulations:

'If the applicant has paid to an agency or a Minister an amount fixed under section 9 in respect of the charge, then:

- (a) if the amount paid under section 9 in respect of the charge exceeds the amount fixed in respect of the charge under this section—the applicant is entitled to a refund of an amount equal to the amount of the excess; or*
- (b) if the amount paid under section 9 in respect of the charge is less than the amount fixed in respect of the charge under this section—the amount paid by the applicant under section 9 is taken to be a deposit on account of the charge fixed in respect of the charge under this section.'*

Charges to be paid before access is given to documents — section 11A(1)(b) of the FOI Act and section 11(1) if the Regulations

Where the Applicant is liable to pay a charge in relation to accessing a document, the department:

- must process and receipt charges before documents are sent to the Applicant; and
- must not send documents to an Applicant first and ask for payment in return.

The notable exception to this is any charge relating to the supervision, by an officer, of the personal inspection of documents by the Applicant (including audio tapes, films or videotapes). If an Applicant is seeking access to their own personal information and an alternative method in accessing their information is available outside of the FOI Act, the Applicant should be advised and referred to the appropriate contact person/area in the department.

Charges for access to exempt documents and 'prior' documents — subsection 94(3)

The department always has a discretion to release documents — including exempt documents — other than under the formal processes of the FOI Act (section 14).

The FOI Act provides that where, in response to a request, access is given to a document that the Applicant would otherwise have no right of access to, the Regulations apply as if the access had been given in accordance with an entitlement under the Act. For example, documents to which the right of access in section 11 of the FOI Act does *not* apply. Accordingly, the Regulations should be applied in calculating the *charge payable* where the department decides, as a matter of discretion, to grant access to:

- a document which is exempt under the provisions of Part IV of the Act
- a document of an exempt agency (section 7 and Schedule 2 of the Act);
- a 'prior' document (that is, a document to which subsection 12(2) applies); and
- library material maintained for reference purposes (subsection 4(1)).

No prescribed charges for access outside Part III of the FOI Act — section 8

No charges as set out in the Regulations can be applied to:

- documents that must be made available under section 8 (which requires publication of a statement by the department of categories of documents maintained in the possession of the department, including documents customarily made available to the public free of charge upon request).
- Documents that must be made available under section 9 (which requires that certain documents be made available for purchase or inspection — of course a reasonable purchase price, using the general executive power of the Government, may be applied to those documents).

This is because these documents are excluded from access under Part III of the FOI Act and therefore the Regulations do not apply.

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Procedures for estimating, notifying, imposing and collecting charges

Applicants should be given an early indication of the likely cost of their requests and an opportunity to modify or withdraw requests if they wish.

While procedures will vary from agency to agency, the following is a guide to the FOI procedures for the purpose of estimating charges.

Table 4: Procedures/steps

The department receives a valid request	<p>Collect all documents that fall into the scope of the request</p> <p>Identify all duplicate documents (since charges for decision-making should be made only once in respect of a document)</p>
The department determines whether the Applicant is liable to pay a charge	<p>Considerations:</p> <ul style="list-style-type: none">• should charges be imposed• are documents ones for which no charge is applicable, e.g. own income support documents• are there public interest grounds to not impose charges• is the request for own personal information• has the charges been estimated at the lowest possible cost to the Applicant• is the estimate of charges approximately \$50 and if so by how much

<p>Notify the Applicant of their liability under section 29 to pay a charge</p> <p><i>Note</i> Upon receipt by the Applicant of the written section 29 notice the clock stops on the 30 day time limit under section 15(5)(b) (or the period as extended under section 15(6)) for notification of a decision on the request.</p> <p>It is suggested that the notice be sent by certified mail so the department has confirmation of the date on which the notice is received. Agencies can generally assume that the Applicant receives the notice on the next business day following its posting</p>	<p>Send the Applicant a written notice, before the time the acknowledgment of the request is sent (within 14 days of the request) informing:</p> <ul style="list-style-type: none"> the Applicant is liable to pay a charge (i.e. the total of the individual charges); the department's preliminary assessment of the charge, and the basis for that assessment (eg how many hours of work, in total, are estimated to be involved at the relevant charging rates set out in the Regulations, how many hours are estimated to be involved, etc); the Applicant may agree to pay the charge or deposit as assessed, contend that the charges have been wrongly assessed and should be reduced or waived, or may withdraw the request; the amount of any deposit the Applicant is required to pay before the request will be further processed; the time limit (30 days, or such further period as the department's allows), to advise the department of the Applicant's response (whether agreeing to pay the charge, or contending that the charge should be reduced or not imposed, or withdrawing the request), including the reasons for any contention that the charge should be reduced or not imposed; and the request will be taken to have been withdrawn if no response is received within that time. <p>Consider consulting with Applicant before a section 29 letter is sent, where charges are likely to be high. This may result in application being withdrawn or reduced in scope.</p>
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<p>The department receives advice from the Applicant contesting charges. The Applicant has a right to argue that the department has wrongly assessed the charge (eg based on a mathematical mistake, a mistake as to the charge rate or the amount of work involved, etc)</p> <p>The department must now consider whether it should exercise its discretion to reduce, or not to impose, the charge</p>	<p>The Applicant should also now be informed to provide reasons why it is in the general public interest or the interest of a substantial section of the public or any other reason to have the charge reduced or waived.</p> <p>In exercising its discretion on whether to impose a charge, the department will have regard to all relevant reasons, but in all cases it must consider whether payment of the charge (or part of it) would cause the Applicant financial hardship, and whether disclosure of the documents would be in the general public interest or the interest of a substantial section of the public or any other reason.</p> <p>The department should notify the Applicant of the decision about charges as soon as possible, but no later than 30 days after receiving request for reduce or waive the charge.</p>
<p>Applicant fails to respond within 30 days or withdraws request</p>	<p>The request is treated as withdrawn and the Applicant should not normally be required to pay any charge.</p> <p>Charges should only rarely be imposed where a request is specifically withdrawn or is treated as withdrawn: one appropriate case would be where there were large search and retrieval costs and the Applicant had been given the opportunity to narrow or withdraw the request before the work was done and was warned of the charges involved. To charge for search and retrieval time in normal cases would be contrary to the spirit of section 29, which allows for withdrawal (express or implied) where the Applicant is unable or unwilling to meet the charges</p>

<p>The department fails to make a decision on a request to reduce or waive the charge within 30 days</p>	<p>The department is deemed to have imposed the charge it first estimated and the Applicant may appeal directly to OAIC for review of the deemed decision. An Applicant may ask that the request be treated as withdrawn if the department decides that there are insufficient grounds to justify a decision to reduce, or not to impose, a charge.</p>
<p>No charge is to be imposed until the Applicant has notified the department as required, or the period of 30 days (or any further period allowed for notifying the department has elapsed (when the request is treated as withdrawn). The department decides after receiving submission from Applicant about remission that charges will be imposed</p>	<p>The department now decides whether:</p> <ul style="list-style-type: none"> • not to impose a charge at all; • to reduce the amount of the charge; or • to impose a charge of the amount originally estimated. <p>In the last 2 cases the Applicant becomes liable to the Commonwealth for payment of the relevant amount.</p> <p>If the department decides that a charge should be imposed, it must notify the Applicant of the decision and seek payment of any deposit (refer to the Notice of a Decision on a Request for Waiver template). The Applicant has a right to seek internal review (and subsequent OAIC review) of the decision to impose a charge.</p>

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<p>The clock stops until the Applicant pays or agrees to pay</p>	<p>When an Applicant receives a notice under subsection 29(1) (notification of liability to pay a charge) or subsection 29(6) (notification of decision to impose a charge after consideration of any contentions by Applicant for reduction or waiver of the charge), the 30-day time limit (or 60-day time limit where statutory consultation is required: subsection 15(6)) for notifying a decision on the original request (if it has not already expired) <i>stops</i> until one of the following occurs (see section 31(1):</p> <ul style="list-style-type: none"> • the charge or relevant deposit is paid; or • reduction or a waiver of the charge is sought, whether initially or on internal review, and either: <ul style="list-style-type: none"> • a waiver request is granted by the department; • any reduced charge or appropriately reduced deposit is paid; <p>OAIC sets aside decision to impose a charge; or</p> <ul style="list-style-type: none"> • OAIC substitutes a reduced charge and payment is made or the deposit is appropriately reduced.
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<p>Further processing and giving of access</p> <p>Where the Applicant wishes to proceed with a request, the following steps occur after the notification of imposition, reduction or waiver of a charge</p>	<ul style="list-style-type: none"> • where a charge is imposed, the Applicant pays the deposit (or full charge if he or she wishes) • the department processes the request • if necessary, the department revises its assessment of the charge payable by the Applicant based on the actual amount of work involved in the request; if the department refuses access to any documents, the charge can be less but not more than the department's preliminary assessment originally notified to the Applicant (section 10(2)) • the department notifies its decision on the request and seeks payment of the remaining charges • the Applicant is given access to the documents only after all charges have been paid (section 11(1)). There is an exception in the case of access by inspection (section 11(2)). A charge is only required to be paid before inspection takes place where an estimated charge has already been fixed in accordance with section 9(1)(c) <p>The department may recalculate the estimate to determine the actual cost of processing. If less than accepted estimated, refund the difference between actual and estimated costs.</p>
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Where charges are likely to be very high, the department can undertake an informal consultation with Applicant(s), to assist them to obtain information at the lowest possible cost.

Example: Where an Applicant has sought copies of all documents on a particular subject which would involve, say, over 1000 pages, it might be suggested to the Applicant that whether they really want copies of all the documents or whether they might be more selective. Informal consultations should be undertaken as early as possible if clarification on the scope of the request is required or a voluminous amount of documents are identified.



FOI SEARCH AND RETRIEVAL CHECKLIST

This checklist will assist decision makers and FOI action officers to identify, locate and collect all documents held within the Department which are relevant to a FOI request being processed. The Checklist will also assist the FOI Unit in processing a FOI request and calculating charges (if any).

Please complete and sign the Checklist, and provide it to the FOI Unit.

What is a document?

The *Freedom of Information Act 1982* defines a document as:

- (a) any of, or any part of any of, the following things:
- any paper or other material on which there is writing;
 - a map, plan, drawing or photograph;
 - any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
 - any article on which information has been stored or recorded, either mechanically or electronically;
 - any other record of information.
- (b) any copy, reproduction or duplicate of such a thing; or
- (c) any part of such a copy, reproduction or duplicate; but does not include:
- material maintained for reference purposes that is otherwise publically available; or
 - Cabinet notebooks.

What does this mean?

Subject to the exclusion for reference material and Cabinet notebooks, virtually any physical or electronic medium from which information can be extracted is considered a document for FOI purposes. This includes not only paper and electronic files, but also emails (in electronic and hard copy form, whether personal or business in nature), post-it notes, notepads, diaries and calendars (whether electronic or hard copy), instant and text messages and sound or vision recordings. If in doubt, please consult the [Health Intranet](#) and the FOI Unit.

How to approach the search task

- Read and consider each part of the FOI request, identifying and understanding the information within the documents that the applicant is seeking.
- Where there is ambiguity about a term or about any part of the request, the FOI Unit can assist in contacting the applicant for clarification (on behalf of the Decision Maker).
- Complete the Search Checklist and Certification below. While officers should use their judgment in undertaking the search task, be aware that the Department may have to provide sufficient evidence during external review of FOI decisions that support a thorough search having been undertaken.

Contact

The FOI Unit can further assist with search parameters, identification of documents and request scope. The FOI Unit can be contacted by email: FOI@health.gov.au or via phone: (02) 6289 1666.

SEARCH CHECKLIST [FOI XXX]

I have requested that all relevant areas in the Department undertake a search for documents ☐

Division/Branch Search

I have searched the following locations for documents relevant to the FOI request:

E-mails, including individual and group email accounts ☐

Trim Files and paper files held in my Division/Branch ☐

Paper files relating to my Division/Branch held in Records Management ☐

Electronic documents on shared and personal drives, including USB, Floppy Disks, CDs
and other devices ☐

Department Databases ☐

Safe ☐

Personal folders, notebooks, calendars & diaries of relevant officers ☐

Other (specify, for example MIRACLS, PDMS, SAP, FOFMS) ☐

ESTIMATED TIME SPENT PROCESSING FOI REQUEST

Date	Name	Section/Branch	Total Time Taken

SEARCH CERTIFICATION

I have located document/s that may be relevant to the request and forwarded these to the Action Officer or FOI Unit (if filled in by Action Officer) ☐

Despite a thorough and diligent search, I have been unable to locate any documents relevant to the terms of the FOI request. ☐

Note: Where documents do not exist or cannot be located, the efforts and extent of the search for the documents should be recorded in a signed and dated file note and saved in the relevant FOI request TRIM file. ☐

I am satisfied that I have undertaken a thorough search for documents relevant to this request and that all reasonable steps have been taken to identify relevant documents and provide them to the decision-maker. ☐

Signature: _____ Date: _____

Name: _____ Position: _____

Sample schedule of documents

Note on schedule

This table summarises the recommended elements for a schedule of documents as part of an access decision under the *Freedom of Information Act 1982* and is included in all Notices of Decision.

In addition to the categories of information below, decision makers may also wish to record, for their own purposes, details of where a document is located, such as the file name or number, the folio number or whether it is an electronic or hardcopy record. This may assist later work on the request, such as internal review, where a new decision maker must revisit documents and review an earlier decision.

Schedule of documents – Freedom of information request no. [insert unique number/code]

Document no.	Date	Number of pages	Description	Decision on access ¹	Exemption
	<i>Date(s) document created (or date received if creation date unknown) and date(s) document annotated</i>	<i>Number of pages (or other physical descriptor)</i>	<i>Describe the nature of the document and provide details of the author and/or addressee (where applicable).</i>	<i>State whether the document is being:</i> <ul style="list-style-type: none">• released in full• released with deletions on the basis of one or more specific exemptions (including deletion of irrelevant matter under s 22)• access is refused on the basis of one or more specific exemptions• access is being deferred• access is being granted in a different form from that requested	<i>State exemption and (if applicable) where exemption is claimed on document (for example which page; if there is more than one exemption claimed on a single page, provide further detail such as paragraph or line number. Alternatively you may choose to annotate the document with the exemption number next to each redaction.)</i>
1					

¹ E = Exempt, R = Release, RI = Release with irrelevant information removed, RE = Release with exempt information removed.

FOI CHARGES ESTIMATE TOOL - SIMPLE

(insert data in shaded boxes only)

GENERAL DATA ESTIMATE

(terms in red are explained on the notes sheet)

Pages (approx) of material in scope		in A4 pages
Number of discrete relevant documents		
Percentage (approx) of pages to disclose in whole		
Percentage (approx) of pages requiring redaction		
Percentage (approx) of content that is applicant's own personal information		
Number of third parties to consult		

PROCESS - search and retrieval	TIME per task	charge time:	COST @ \$15 per hr
Time required to execute searches - enter hours (including part hours eg 0.5)		0.0000	\$0.00
Preparing schedules detailing all relevant documents (basic data entry eg doc no, date, description) - enter minutes per 10 documents		0.0000	\$0.00
<i>Search & Retrieval Subtotal</i>		0.0000	\$0.00

PROCESS - decision-making	TIME per task	charge time:	COST @ \$20 per hr
Examine relevant pages for decision making - enter minutes per page		0.0000	\$0.00
Redacting pages that are partially disclosed - enter minutes per page		0.0000	\$0.00
Consult third parties - enter average per third party in hours		0.0000	\$0.00
Preparation and notification of decision			
Writing statement of reasons - enter hours		0.0000	\$0.00
Complete schedule by recording decision @ 4 documents per minute		0.0000	\$0.00
<i>Decision-making Subtotal (before deduction of 5 hours)</i>		0.0000	\$0.00
<i>Decision-making Subtotal (after deduction of first 5 hours free for all)</i>		0.0000	0

ACCESS - view / inspect	TIME per task	charge time:	COST @ \$6.25 per 1/2 hr
Supervised inspection of documents - minutes per page		0.0000	0.00
Supervised inspection of audio/visual material - insert total duration of material in minutes then add 30 mins set-up and pack-up time		0.0000	0.00
<i>Inspection/Viewing Subtotal</i>	0.00	0.0000	\$0.00

ACCESS - copy and post	PAGES	COST @ 10c a page
Photocopies of estimated released pages (including those with deletions) - set to 0 if providing electronically	0	\$0.00
Electronic media (eg USB drive, CD-ROM) and/or postage - insert estimated cost of materials		
<i>Access Subtotal</i>		\$0.00

ESTIMATED TOTALS		
NUMBER OF RELEASED PAGES		0
TIME (in hours)		0.00
TOTAL COST		\$0.00
Financial hardship/public interest discount (as %)	0%	\$0.00
TOTAL COST (after discount)		\$0.00
MAXIMUM DEPOSIT		N/A

USING THIS TOOL

This tool assists in generating an estimate but should not be considered definitive or binding. The Office of the Australian Information Commissioner has emphasised the need for agencies to base estimates on a reasonable sampling of relevant documents to ensure that appropriate assumptions are

FOI CHARGES ESTIMATE (NOV 2010)		
Source: Australian Government Solicitor		
(insert data in shaded boxes only)		
BASIC DATA ESTIMATE		
Number of relevant files		
Number of relevant pages		
Number of relevant documents		
Number of fully exempt pages		
Number of pages released with deletions		
Number of documents for access via inspection		
Percentage of request relating to applicant's own personal information		
Number of third parties to consult		
PROCESS - search and retrieval		
	TIME (in hours)	COST @ \$15 per hr
Search and retrieval (10 mins per file)	0.00	\$0.00
Search files and tag relevant pages (45 mins average per file)	0.00	\$0.00
preparing schedules detailing all relevant documents (basic data entry e.g. doc no, date, description - 30 minutes per 10 documents)	0.00	\$0.00
<i>Search & Retrieval Subtotal</i>	0.00	\$0.00
PROCESS - decision-making		
	TIME (in hours)	COST @ \$20 per hr
examine relevant pages for decision making (5 mins per relevant page).	0.00	\$0.00
exempted pages (5 mins extra per page to cover additional consideration of complexity of material, elements of exemption claim, public interest etc).	0.00	\$0.00
pages released with deletions (5 mins extra per page to cover time needed to redact the material)	0.00	\$0.00
consult third parties (2 hours per third party)	0.00	\$0.00
preparation and notification of decision (3 hours for statement of reasons, plus 4 hours per 250 relevant pages to complete schedule to record decision) - NB if several exemptions are involved, further time may be required.	0.00	\$0.00
<i>Decision-making Subtotal (before deduction of 5 hours)</i>	0.00	\$0.00
<i>Decision-making Subtotal (after deduction of first 5 hours free for all)</i>	0.00	0
ACCESS - view / inspect		
	TIME (in hours)	COST @ \$6.25 per 1/2 hr

Number of agency's files that contain at least one relevant document.

Total number of pages of all documents relevant to the request (including exempt pages)

Number of agency documents falling within the terms of the request.

Number of pages of relevant documents to be exempted in full.

Number of pages of relevant documents to be released in part.

Number of documents for which access is by supervised inspection of the document.

Agencies may not charge for FOI requests to the extent that they relate to personal information about the FOI applicant


Applies to non-Commonwealth consultees (e.g. individuals, businesses, other governments). Only count each party once if referred to in multiple documents.

SENDING OUT CHARGES

Notice of Liability to pay a charge

- In the FOI inbox, there is a template for a 'Notice of Liability to pay a charge' email in the 'Stationary' folder.
- Using the information from the calculator that was populated from the information in the schedule of documents, populate the information into a new email with the template copied into the new email. Do not use the template email as a draft.
- Use other sources of documentation (the request) or VOLT to populate the other information required for the template.
- Once your draft 'Notice of Liability to pay a charge' is ready, drag the email into the FOI inbox folder 'Emails for clearance'.
- Draft a new email to the person responsible for clearing the draft 'Notice of Liability to pay a charge' and attach the schedule of documents and the charges calculator and let them know that the email is ready for clearance in the 'Emails for clearance' folder.
- Once the 'Notice of Liability to pay a charge' email has been cleared, VOLT is to be updated. This can be done in parallel if the request and the documents are straight forward.
- The more justifications entered into the calculator may require changes to the 'Notice of Liability to pay a charge' if the justifications don't match the amount charged e.g. if the charge is quite high and hours spent searching is not that high, number of documents is only a small amount.
- Update the 'Charges and Waivers' tab in VOLT with the information from your Notice of Liability to pay a charge including the date the Notice is sent.
- Check that the SLA is paused if the Notice is being sent on the same day.
- Include when to send?

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THE FREEDOM OF INFORMATION ACT 1997
BY THE DEPARTMENT OF HEALTH



From ▾

FOI@health.gov.au

To...

Cc...

Subject

Freedom of Information Request XXX - Notice of Liability to pay a Charge and Third Party Consultation

CURRENT TEMPLATE – PLEASE DON'T SAVE OVER

Dear XX

I refer to your request of XX 2019 to the Department of Health (department) seeking access under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the following documents:

'Request.'

Notice of Liability to Pay a Charge

s47E(c) s47E(d) s47F Director – Freedom of Information, an officer authorised under section 23(1) of the FOI Act to make decisions in relation to freedom of information charges, has decided you are liable to pay a charge in respect of the processing of your request.

Preliminary Assessment

In accordance with section 29 of the FOI Act and the *Freedom of Information (Charges) Regulations 2019*, my preliminary assessment of the charge you are liable to pay is \$XX.XX.

This has been calculated as follows:

search and retrieval time (including time spent locating relevant files and collating relevant documents contained on those files)	X.XXXX hours @ \$15.00 per hour	\$XX.XX
decision making time (including time spent examining the documents, considering exemptions, undertaking consultation, writing the decision and preparing any documents for release)	XX.XXXX hours @ \$20.00 per hour	\$XX.00
	Less first 5 hours free	(\$100.00)
TOTAL		\$XX

Deposit


s47E(c) s47E(d) s47F has also decided you are required to pay a deposit of \$XX. Payment of a deposit is taken as your authority to proceed with processing of your request and your agreement to pay the full charge in which case you will become liable to the Commonwealth for the full cost of processing the charge.

Payment

The department can accept credit card, money order or cheque payments.

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

FOI Unit (MDP 516)
Department of Health
GPO Box 9848

 Send	From ▾	FOI@health.gov.au
	To...	
	Cc...	
Subject		Freedom of Information Request XXX - Notice of Liability to pay a Charge and Third Party Consultation

If you wish to pay by credit card, please contact the department's FOI unit on (02) 6289 1666 to be further advised.

Response

Under the FOI Act, you have 30 days to respond in writing to this notice. You must, within 30 days after this notice is given, do one of the following things: (i) agree with the department's estimate and pay the deposit or whole charge if no deposit is listed, or (ii) advise the department in writing you contend the charge has been wrongly assessed, or should be reduced or not imposed, giving reasons for your contention, or (iii) advise the department in writing you withdraw the request for access to the documents concerned. Please send your response to the above postal address or [this email address](#). If you do not provide a response within 30 days, your freedom of information request will be taken to have been withdrawn.

If you choose to make a contention the charge should be reduced or not imposed, the department must, in making a decision on your contention, take into account the matters set out in section 29(5) of the FOI Act or any relevant matter.

Processing time

Processing of your request and counting the 60 calendar days are suspended from the date you receive this notice and resume either when you pay the deposit or when any contention you make about the charge has been resolved.

Relevant provisions

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

If you require clarification of any of the matters discussed in this email you should contact the department's FOI Unit on (02) 6289 1666, or by email at FOI@health.gov.au.

Kind regards

FOI and Legislation Section

Legal Advice & Legislation Branch
Legal & Assurance Division | Corporate Operations Group
Australian Government Department of Health
T: 02 6289 1666 | E: foi@health.gov.au
GPO Box 9848, Canberra ACT 2601, Australia

The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.

If you receive this email in error, please delete it and contact the sender immediately.

APPLICANTS OPTIONS

REQUEST A WAIVER OF CHARGES

- GROUNDS FOR REMISSION OF FEES OR CHARGES OR PARTIAL REMISSION OF FEES

The FOI Act specifies two principal grounds for remission of charges. The grounds are not exhaustive and the department may remit charges on any relevant ground.

Financial hardship

Financial hardship will depend on the Applicant's financial circumstances and the amount of the estimated charges to process the request. The OAIC Guidelines states that financial hardship means more than an Applicant having to meet a charge from his own resources. A form, adapted from that used by the AAT for its own administrative purposes, to determine whether or not an Applicant is in financial hardship, is located <where>. The department can use this form where there is doubt about the financial circumstances of the Applicant. It is not suggested that a full inquiry into the Applicant's circumstances be undertaken in each case. Even when large amounts of money are in issue (which would not often be the case when an individual Applicant makes the request) a detailed inquiry into the Applicant's means would rarely be justified. Processing FOI requests, like other areas of public administration, is subject to the *Privacy Act 1988*, and a fundamental principle of good privacy practice is to minimise the collection of personal information to what is strictly necessary to perform the administrative task in question.

An inquiry as to income, estimated weekly commitments and available cash in a bank or building society, would usually be sufficient to assess the degree of hardship involved in the payment of a charge.

It is up to the department to establish the standard of proof Applicants must meet to establish a claim for hardship. That standard may include acceptance of an Applicant's claim of hardship on the face of the application, the production of a pension or health care card or a full disclosure of the Applicant's financial circumstances.

Public interest

Reduction or remission of charges (section 29) on public interest grounds depend on whether the access to the documents sought is in the general public interest or a substantial section of the public, **and not** on whether 'the granting of remission' is in the public interest. It follows then that the public interest test would not usually be satisfied where the access would primarily be of benefit only to the person making the request.

'In the public interest' is, in this sense, something that is of benefit to the public at large. There are a number of factors that agencies need to consider:

- whether the benefit from the release of the information contained in the particular documents will flow to the public at large, or a substantial section of the public, as well as to the Applicant who requested the documents (a question of end use). If no benefit flows to the public from access, because the information will not be made publicly available, the public interest ground for remission or reduction has clearly not been satisfied; and
- whether, in light of all the circumstances, would making the specific information in the particular documents more widely available be 'in the public interest' in the above sense. This requires consideration of both the contents of the documents as a whole and of the context of their release. Mere curiosity on the part of a person or a substantial section of the public would not constitute a public interest ground. On the other hand, if a disclosure would contribute valuable material to an existing public debate, the disclosure would be in the public interest.

When the department is making the decision to reduce or remit charges on public interest grounds, the department is effectively making the decision that some public benefit will flow from the giving of access. However, there may be other factors against releasing the information that will outweigh the public benefit argument.

When the department concludes that giving access would be in the public interest, it should grant a full remission of charges in the absence of any relevant countervailing factors. Where there are other relevant countervailing factors they should be weighed against the public interest in giving access, and this *may* (but need not) result in partial remission or reduction.

Onus on the Applicant to state supporting reasons

Normally, an Applicant seeking remission or reduction of charges should state the grounds on which the application is based. Where an Applicant requests the remission of charges, the department must consider the two reasons set out in section 30A and any other relevant reason that comes to the department's attention (whether or not the Applicant specifically raises any of those reasons). The department has the discretion to remit the charges where grounds have clearly been established, even though they were not raised by the Applicant.

In the case of charges, subparagraph 29(1)(f)(ii) specifically requires the Applicant to state the reasons for contending that a charge should be reduced or remitted.

However, if the department becomes aware of another relevant factor, whether or not it has been raised by the Applicant, it should be taken into account.

Circumstances where there is no automatic right to remission of charges

There is no automatic remission of charges based solely on the status of the Applicant or of the institution on behalf of which an Applicant may be seeking access.

Similarly, the fact that an Applicant is a Member of Parliament does not, of itself, entitle the Applicant to a reduction or remission of charges on the grounds of public interest. Again, the central issue is whether access to the particular documents sought is 'in the public interest'. The content of the documents, and the context of their release, rather than the status of the Applicant, are relevant to any consideration of this matter. Where a Member of Parliament has sought a reduction or remission of charges, the department might consider:

- referring the request to the Minister responsible for the department to which the request is made (note that subsection 23(1) of the FOI Act provides that the responsible Minister always has a discretion to make an FOI decision on behalf of their department); or
- deciding the matter in accordance with any guidelines issued by the Minister responsible for the department to which the request is made (the content of guidelines is a matter for individual Ministers).

As with Members of Parliament, there is no automatic reduction or remission of charges in the public interest for journalists. Whether giving the access sought is in the public interest is determined on a case-by-case basis. While the question of possible commercial benefit to the publisher of the newspaper or journal may be a relevant factor to take into consideration (though in a specific instance the commercial benefit of publication is unlikely to be very great, and the paper or journal may often be performing a public service by publishing the results of FOI requests), it may not be of great weight when balanced against the benefits to the public of giving access.

Other reasons

All other relevant reasons must be taken into account when making decisions relating to remission and

the reduction of charges. The following is an illustrative, but not exhaustive, list of other reasons for remission.

- The documents in question contain personal information about the Applicant (although this is no longer a mandatory consideration).
- The documents are staff-related and the department has a policy to not charge staff for FOI requests.
- The number of documents to be released is small.
- The documents are required for the purpose of procedural fairness.
- The documents are required for research purposes for which no commercial benefit will be gained by the Applicant.
- Compensation for the department's delays in processing applications.
- The department was able to retrieve the documents easily and at marginal cost.
- The department would, in different circumstances, make the information available under 'standard access provisions'.
- The request is simple and clear and will involve little work.
- Where the cost of calculating charges and subsequent dealings with the Applicant will be greater than the cost of processing the request quickly and efficiently.
- The remission or reduction would enhance client relationship management: that is, the management of the client's broader dealings with the department.
- The volume and complexity of the documents is to be considered.
- The decision to charge is likely to be overturned on review by OAI.
- The influence of external timeframes — the documents are urgently required to meet deadlines such as court appearances or hearings or for employment-related purposes.
- Any other acceptable and justifiable decision.

Whatever the reason, it should be documented and signed off by a person authorised to make decisions under the FOI Act in respect of charges.

Discretionary nature of decisions concerning a reduction or remission of charges (subsections 29(4) and 30A(1))

The department retains the discretion to reduce or remit charges even where no reason to remit has been made.

Where an Applicant establishes that either financial hardship or public interest grounds exist, and in the absence of other relevant countervailing considerations, charges should be reduced or remitted in whole, as the case may be.

Any relevant countervailing considerations should be carefully weighed against the strength of the other established reasons before deciding whether to reduce or remit a charge. The following are examples of relevant countervailing considerations.

- Where the Applicant could reasonably be expected to obtain a commercial or other benefit from disclosure (this should not be inferred lightly).
- Where the Applicant has previously been granted access to the same documents and cannot demonstrate a further need for access at no charge.

Each application for a reduction or remission of a charge must be considered on its merits, having regard to the circumstances of the particular application. The granting or refusal of such applications should not be regarded as automatic to any class of Applicant. In the normal course of making a decision on whether to grant access in accordance with a request, the Applicant's reasons for seeking a document are not relevant and should not influence the decision (subsection 11(2)). However, in considering an application for a reduction or remission of a charge, those reasons may be relevant matters that may properly be

taken into account.

Partial remission or reduction

Charges may be remitted in whole or in part. The discretion to remit charges in whole or in part applies in all cases, including where remission is sought on public interest grounds. So far as charges are concerned, section 29 specifically provides not only for their full remission, but also for their reduction. This means that where there are grounds for public interest remission, Applicants can still be asked to contribute from their own resources, for example, because of expected commercial gain.

Notification of decisions on reduction or remission of charges — section 29

Applicants must be informed of the grounds on which the department may decide to remit charges or to impose charges that are less than those that were originally estimated. The Act provides that the department should give notice to an Applicant of its preliminary estimate of charges and give the Applicant an opportunity to contend that a charge has been wrongly assessed, or that the charge should be reduced or remitted (subsection 29(1)) because it could cause financial hardship or that the giving of access is in the public interest or for any other reason.

The Act requires the department or Minister to take all reasonable steps to enable an Applicant to be notified of the decision on the final amount of the charge payable **as soon as practicable**, but in any event not later than 30 days after the day on which the Applicant notified the department or Minister under subparagraph 29(1)(f)(ii) that he or she contests the estimate or seeks reduction or remission of the estimated charges

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REVIEW OF DECISIONS ON FEES AND CHARGES

Decisions in respect of the imposition of application fees or charges are reviewable both by internal review (see paragraphs 54(1)(d) and (e) of the FOI Act) and to review by the OAIC (see paragraphs 55(1)(d) and (e) of the FOI Act). This includes an internal and OAIC review of deemed decisions under subsections 29(7) and 30A(1B).

It is suggested that agencies remit the internal review fee where the only issue on internal review is payment of the first internal review fee.

APPLICATION OF MONIES RECEIVED

The Department of Finance has provided the following advice on the application of moneys received by way of charges under the FOI Act:

Receipts arising from charges imposed under the FOI (Fees and Charges) Regulations shall be credited to Miscellaneous Revenue. In order that the total amount received in respect of FOI requests can be readily ascertained at any time during the financial year, departments should structure ledger codes within Miscellaneous Revenue to ensure that receipts from FOI charges are separately identifiable. Entities whose enabling legislation gives them ownership of moneys legally distinct from the Executive Government of the Commonwealth should pay receipts from charges into those bank accounts that their enabling legislation has authorised them to operate.

In other words, agencies should set up their receipt systems in such a way as to be able to report on how much money was collected by way of fees and charges.

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HELPFUL INFORMATION

Actual cost

Re-assessment of charges if required

Certain charges are required to be fixed at an amount not exceeding the actual costs incurred.

These relate to:

- producing a document by computer or other like equipment;
- arrangements made for an Applicant to have access to a telephone recording, data, text message, video; and
- providing a copy of the telephone recording, data, text message, video.

Agencies may be required to justify to OAIC the 'actual costs incurred' and should, therefore, keep accurate records of those costs (for example, expenditure on the hire of a venue for an Applicant to view a film).

- Charging on a full cost-recovery basis should reflect the cost of the resources used in providing access for the service. For example, where it is appropriate to fix a charge for providing access to a transcript of a telephone recording, the actual cost where the department *uses its own* resources to have the telephone recording transcribed, should include:
 - the cost of labour directly — that is, readily and specifically associated with the production of an output;
 - the cost of materials and services directly consumed in the production process;
 - an appropriate share of indirect labour costs, both cash and accruing;
 - accommodation costs;
 - a share of indirect materials and services; and
 - capital costs, including depreciation, imputed interest on working capital and a return on non-current assets employed, based on current values.

Where the department requires services from organisations outside the department in order to provide the documents in scope of the request in a format that is reasonable, the amount charged by the department for providing the documents should be based on actual costs. The department should be prepared to justify the cost to OAIC if need be.

Where the actual cost of providing the access is likely to be high (for example, where production of the documents requires the use of an external organization at a cost incurred, it is imperative that the Applicant be informed of this cost when being notified of the estimated charges under subsection 29(1).

Charges where access may be given in alternative forms — subsection 20(4) and regulation 8

The FOI Act specifies that access may be provided in the following forms (section 20):

- inspection of the document;
- provision of a copy of the document;
- provision of the means of hearing a sound recording or telephone recording; or
- provision of a transcript of a sound recording or of shorthand notes.

Generally, where an Applicant has asked for access in a particular form, they are entitled to receive it in that form unless access in that manner:

- would interfere unreasonably with the operations of the department or the performance of a Minister's functions;

- would be detrimental to the preservation of the document or would otherwise be inappropriate; or
- would, but for the FOI Act, involve an infringement of copyright (other than a copyright owned by the Commonwealth).

Here are some examples of access given in a form other than that requested.

- Where access in the form requested could damage the documents or where an Applicant wishes to inspect documents that are required by the department for its everyday operations. In both cases the department may refuse to make the actual documents available for inspection and, instead, provide copies.
- Where an Applicant seeks access to a telephone recording of a telephone conversation, which would have to be produced, the department may give access to the recording itself.
- Where an Applicant seeks access to data that the department holds but the data is stored in a database and not in the parameters to which the Applicant requires, the department can produce a document under section 17 of the FOI Act within those parameters if it is reasonable to do so.

The following charging principles apply where access is given in alternative forms:

- where an Applicant specifies a particular form of access, they cannot be charged any more than the charge for that form of access, even where access is given in another form; and
- where an Applicant does not specify a particular form of access, they may not be charged any more than the charge for the cheapest form of access necessary to meet the request.

A decision to provide access in a form other than that requested is subject to internal review and then review by the OAIC.

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DEPARTMENT OF HEALTH

Corporate Business Rules

CBR 10: Dealing with Freedom of Information (FOI) Requests

January 2020

Author: Legal Advice and Legislation Branch

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Audience

This Corporate Business Rule applies to all staff, both ongoing and non-ongoing, including employees of consultants and service providers.

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Overview

1. Purpose

This Business Rule sets out the key stages for processing a Freedom of Information (FOI) request received by the Department of Health (department) and identifies who or which area of the department has responsibility for each stage. It also provides links to the key resources for processing an FOI request.

This Business Rule incorporates the principles and key concepts of the requirement outlined in *Part D – Managing our Services, 10. Dealing with Freedom of Information (FOI) Requests* of the Secretary's Instructions.

2. Policy

Officials are required to:

- comply with the provisions of the *Freedom of Information Act 1982* (FOI Act) as a law which imposes specific obligations on Commonwealth agencies; and
- comply with internal departmental procedures, including those set out in this Business Rule.

This is to ensure that the department is able to fulfil its statutory obligations as a Commonwealth agency.

3. Explanation of certain terms

Agency is the term within the FOI Act that refers to Commonwealth entities that are subject to the provisions of the FOI Act.

Decision maker is the officer (usually SES band 1 or higher) who has been authorised by the Minister or the Secretary under section 23 of the FOI Act to make a decision in respect of an FOI access request, and who is responsible for the relevant FOI decision.

Disclosure log form is the template completed by decision makers which provides the rationale for the publication of documents released in response to an FOI request on the disclosure log.

Disclosure log is the publication of information that has been released in response to an FOI request.

Documents (as defined in section 4(a) of the FOI Act) include:

- (a) any of, or any part of any of, the following things:
 - (i) any paper or other material on which there is writing;
 - (ii) a map, plan, drawing or photograph;
 - (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
 - (v) any article on which information has been stored or recorded, either mechanically or electronically;
 - (vi) any other record of information; or
 - (b) any copy, reproduction or duplicate of such a thing; or
 - (c) any part of such a copy, reproduction or duplicate;
- but does not include:
- (d) material maintained for reference purposes that is otherwise publicly available; or
 - (e) Cabinet notebooks.

Note: it is important to be aware that, unless specified in the request, documents within scope include all copies (e.g. photocopies) and all versions (e.g. drafts) whether in electronic or hardcopy form, that have been made and retained, from all areas of the department not just the area with current responsibility for the processing of the request.

FOI request is an application for access to documents that complies with the requirements of the FOI Act.

FOI Unit is the functional unit, headed by the Assistant Secretary, Legal and Assurance Division, Advice and Legislation Branch, with responsibility for ensuring requests are processed in accordance with the FOI Act and departmental procedures.

Internal reviewer is a decision maker authorised to conduct an internal review under section 54C of the FOI Act (usually SES band 2 or higher).

4. Introduction

The FOI Act is a Commonwealth law creating an enforceable right of access for any person who wishes to make a request for documents in the possession of an Agency, or official documents of Ministers. The FOI Act applies to virtually all Commonwealth agencies, including the department.

The FOI Act provides a general right of access to information in the possession of Agencies and Ministers, unless the documents fall within a specific category of exemption.

In certain circumstances, it may be appropriate to respond to an FOI request by providing information or documents outside the FOI Act (i.e. 'administratively'). However, where this is being considered, it should first be discussed with the FOI Unit before any documents are provided.

5. Processing a FOI Request

Timeframes

Under the FOI Act, a FOI request must be processed within 30 calendar days from the date a valid FOI request is received. However, in some circumstances, that time can be extended:

- to allow the department to consult a third party – up to 30 calendar days;
- with the agreement in writing of the applicant – up to 30 calendar days; and
- for complex or voluminous requests (approved by the Information Commissioner) – up to 30 calendar days or other appropriate period.

The 'clock stops' in two instances: when a notice of a liability to pay a charge has been issued to an applicant, and when the applicant is formally consulted on a 'practical refusal reason'.

Deemed Decisions

A 'deemed decision' occurs when a decision on access has not been made within the statutory timeframes.

If a deemed decision occurs, the FOI Unit will apply to the Information Commissioner for an extension of time, under section 15AC of the FOI Act. If the Information Commissioner agrees to the extension, the deemed refusal decision no longer applies and is taken never to have applied.

Charges

There are no fees charged under the FOI Act for the following:

- making an FOI application;
- applicants seeking access to their own personal information;
- the first five (5) hours of decision-making time; and
- applications not decided within the statutory timeframe.

However, the FOI Act provides a discretion to agencies to impose or not impose a charge for providing access, or impose a charge that is lower than the applicable charge.

Applicants can be charged \$15.00 per hour for the time spent searching for or retrieving a document; and \$20.00 per hour for time spent making a decision on a request.

The processing period (including any extensions of time) is suspended from the time the department advises an applicant of an estimated charge until the time the applicant agrees in writing to pay the charge. An applicant can ask the department for a waiver or reduction of the charge, however, the period remains suspended until the department notifies the applicant of its decision as to whether the charge will be waived or reduced.

Under the FOI Act, applicants have up to 30 calendar days to respond in writing to a notice of liability to pay a charge and either advise the department that they:

- (i) agree to pay the charge; or

- (ii) contend that the charge has been wrongly assessed, or should be reduced or not imposed, giving reasons for the contention; or
- (iii) withdraw the request.

If the applicant does not provide a response within 30 calendar days, the FOI request will be taken to have been withdrawn.

Roles and responsibilities of officers

The Assistant Secretary of the Legal Advice and Legislation Branch, Legal and Assurance Division, the nominated decision maker, and action officer of the Division to which a FOI request relates to, are responsible for processing a FOI request. The information below outlines the responsibilities of these officers.

(a) Assistant Secretary, Legal and Assurance Division, Advice and Legislation Branch

The Assistant Secretary, through the department's FOI Unit, is responsible for ensuring the following is undertaken:

Incoming FOI request

- Receiving FOI requests and assessing whether the requests are valid under the FOI Act.
- Assisting applicants to make valid requests as required under section 15(3) of the FOI Act.
- Determining the relevant Division(s) which will process a FOI request.
- Notifying relevant Divisions of requests.
- Initiating contact with the nominated decision maker and action officer regarding the processing of the FOI request.
- Notifying the Ministers' Offices and departmental Executive of receipt of non-personal FOI requests within three calendar days of receiving the FOI request.¹

¹ Note: During Caretaker Period, Ministers' Offices are not notified of a decision three (3) calendar days prior to notification to the applicant. However, the department's Executive is notified of the decision three (3) calendar days prior to notification to applicant.

- Notifying applicants, within 14 calendar days of receiving the FOI request, that the department has received their request.

Charges

- Providing advice to the decision maker and/or action officer regarding the imposition of charges and making charges decisions following consultation with the decision maker.
The FOI decision maker may choose to make the decisions on charges if they wish.
- Within 14 calendar days, or as soon as practicable, sending a charges notice to the applicant.
- Receiving payment from applicants and informing the decision maker and/or action officer when a receipt has been issued.

Consultation

- Providing advice regarding consultation during the decision making process including:
 - assisting in identifying relevant third parties (for example individuals, organisations, or state and territory governments);
 - assisting in identifying other stakeholders to be consulted, for example the Department of the Prime Minister & Cabinet or the Department of Foreign Affairs & Trade and other Commonwealth agencies ('courtesy consultation'); and
 - timeframes for consultations with third parties and/or other stakeholders.
- Preparing relevant documents for consultation.
- Writing to identified third parties and/or other stakeholders seeking their views on the release of identified documents.
- Liaising (where necessary) with third parties and/or other stakeholders and providing responses to the decision maker and action officer.

Decision

- Liaising with the decision maker and/or action officer to discuss any risks in releasing documents and the exemptions available under the FOI Act.

- Reviewing documents marked for redaction, where applicable, provided by the decision maker and/or action officer.
- Drafting the notice of decision, including the statement of reasons, with input from the decision maker and/or action officer.
- Facilitating any request for legal advice by the decision maker, having regard to the risks which may arise from the release or withholding of documents under exemptions, or the decision is at significant risk of challenge.
- Preparing and providing a decision pack (including the draft notice of decision, relevant documents, FOI Decision Pack Checklist, and Disclosure Log Form) for the decision maker's review and signature.
- Meeting with the decision maker and action officer to discuss the final decision.
- Ensuring the decision maker reviews and signs the final notice of decision and the Disclosure Log Form (if applicable), and provides final cleared documents for release.
- Applying redactions to documents where applicable and preparing documents for release to the applicant.
- For non-personal FOI requests – notifying the Ministers' Offices and department's Executive of the decision three calendar days prior to notification to the applicant (where a decision has been made), attaching documents to be released (if any).²
- Sending the notice of decision and documents for release to the applicant and third parties (if applicable) within statutory timeframes.
- Monitoring the third party review rights timeframes and releasing any additional documents as required.

General

- Undertaking all liaison with the applicant, Office of the Australian Information Commissioner (OAIC), other Commonwealth agencies, and third parties, where necessary.

² Note: During Caretaker Period, Ministers' Office is not notified of a decision three days prior to notification to applicant. However, the department's Executive is notified three days prior to notification to applicant.

- Where applicable, forwarding requests that should be transferred to another agency, to the relevant FOI contact of the other agency and requesting they accept the transfer of the request.
- Maintaining and publishing released documents on the department's Disclosure Log within 10 calendar days, following notice to the applicant of the decision.
- Notifying third parties of the decision, including reasons for the decision, where third parties have objected to the release of documents and a decision is made to release documents.
- If applicable, notifying the OAIC of any time extensions.
- Filing relevant documents relating to each FOI request in the department's file management systems.

Note: Nothing in the allocation of responsibilities above is to derogate from the independence of the decision maker in making the decision. The decision maker must exercise their discretion without direction from any other person.

(b) Relevant Division – Decision Maker

Incoming FOI request

The decision maker is the officer nominated to decide on a FOI request which relates to their Division. The decision maker is responsible for and must ensure that, as soon as practicable, the following is undertaken:

- Nominating an action officer to assist in processing a request and advising the FOI Unit.
- Where necessary, consulting with the relevant First Assistant Secretary regarding any sensitivities or risks associated with the request.
- Making arrangements to ensure the following occurs:
 - Search and retrieval throughout the department for all documents relevant to the request is undertaken within the first five calendar days of the department receiving a valid FOI request.

- Preparation of a schedule of all documents identified within the scope of the FOI request.
- All documents within the scope of the FOI request converted to a PDF format and uploaded into the relevant TRIM placeholder created by the FOI Unit.

Charges

- Determining, in consultation with the FOI Unit, whether or not an applicant is liable to pay a charge. The department generally charges for FOI requests where charges are applicable under FOI legislation, and charges notices are issued. FOI applicants may choose, in response to a charges notice, to apply for waiver or reduction based on financial hardship or public interest, with applications considered on a case-by-case basis on their merits.

Consultation

- Ensuring any third parties or other Commonwealth agencies which require consultation are accurately identified and any response provided during the course of consultation is considered.
- Ensuring the Department of the Prime Minister & Cabinet is consulted on any Cabinet documents; and the Department of Foreign Affairs and Trade is consulted on any documents relating to international relations or foreign governments.
- Ensuring any stakeholders within the department are identified and consulted.
- Providing the relevant Deputy Secretary with a copy of the schedule of documents and access to those documents, where necessary.

Assessment of Documents

- Undertake examining of identified documents and considering release or applicable exemptions to be applied to the documents.
- Obtaining legal advice regarding possible exemptions being considered; or on the application of the FOI Act, where the decision maker considers appropriate, having

regard to any risks which may arise from release or withholding of documents, where there is a lack of clarity about exemptions, or the decision is at significant risk of challenge.

Decision

- Making decisions about the release or exemption of documents under the FOI Act in an independent manner, after considering any advice received from the FOI Unit.
- Not less than one week before the date to notify the applicant:
 - preparing media talking points and/or briefing if it is anticipated the decision and/or release of documents will generate media interest; and
 - notifying other Commonwealth agencies if the release of a document may result in questions being directed to those agencies.
- Where applicable, creating in the relevant TRIM placeholder:
 - one full unedited copy of every document clearly identified in the decision;
 - one marked up copy with the relevant exemptions ready for redactions; and
 - one edited copy with exempt material redacted and suitable for provision to the applicant.
- Meeting with the FOI Case Officer to review and finalise the notice of decision and to clear documents for release to the applicant (where applicable).
- By no later than three working days before informing the applicant of the decision, providing the FOI Unit with:
 - a signed notice of decision and accompanying statement of reasons;
 - a signed FOI Procedures Checklist and Disclosure Log Form if applicable; and
 - clearly identified documents to be withheld pending third party review rights (if applicable).³

³ A third party who contends during the consultation process that access should be refused has the right to seek internal or IC review of any subsequent agency decision to grant access.

6. Rights of Review

FOI applicants have two avenues for review of a decision on an FOI request:

- internal review by a decision maker within the department; or
- review by the Information Commissioner (IC review).

FOI applicants are not required to apply for internal review of a decision before applying for Information Commissioner review. There is also no fee or charge for applying for either an internal review or an Information Commissioner review.

Internal Review

FOI applicants can apply for internal review of an 'access refusal decision', while an affected third party to an FOI request may apply for internal review of an 'access grant decision'.

Applicants cannot seek internal review of an earlier internal review decision and in instances where an access refusal decision or access grant decision was:

- made by a minister;
- made by the principal officer of an agency; or
- not made within the statutory timeframe ('deemed decision').

Upon receiving an internal review request, the FOI Unit will identify a person other than the original decision maker to make the review decision. An internal review request is processed in the same manner outlined in part 5 of this Business Rule.

Information Commissioner Review

The Information Commissioner can review the following decisions:

- access refusal decision;
- access grant decision;
- refusal to extend the period for applying for internal review under s 54B;
- an agency internal review decision under s 54C; and
- deemed decision where the statutory timeframe was not met.

The FOI Unit will liaise with the Information Commissioner, and the original decision maker, or internal review decision maker, as appropriate, regarding the IC process.

Further information about IC reviews can be found on OAIC's [website](#).

7. References

Core References

The following core references are of relevance to this Business Rule:

- [Secretary's Instructions](#)
- [Department's Intranet Site](#)
- [Guidelines issues by the Australian Information Commissioner Legislation](#)
- [Freedom of Information Act 1982 \(Cth\)](#)
- [Freedom of Information \(Charges\) Regulation 2019 \(Cth\)](#)
- [Archives Act 1983 \(Cth\)](#)
- [Australian Information Commissioner Act 2010 \(Cth\)](#)

8. Exceptions

Exceptions to this Business Rule will be handled on a case by case basis in consultation with the Assistant Secretary, Legal and Assurance Division, Advice and Legislation Branch.

9. Penalties

Officers should be aware that failure to act in accordance with the Secretary's Instructions could be a breach of the Code of Conduct. A breach of this Code may result in disciplinary action, which may include dismissal.

10. Contacts

The following is a list of contacts for information relating to this Business Rule:

- Assistant Secretary, Legal and Assurance Division, Advice and Legislation Branch
- FOI Director, Legal and Assurance Division, Advice and Legislation Branch.

11. Document Control

Document Owner

This document is owned by Assistant Secretary, Legal Advice and Legislation Branch. The Business Rule was approved by the First Assistant Secretary, Legal and Assurance Division.

Version Control

The following is a record of the history of changes to this Policy:

Version	Issued	Section	Page	Description of change
1.0	Oct 2009			First Release
1.1	Jan 2010			Transcribed to new format
2.0	November 2010			Amendments to FOI Act – 1 November 2010
2.1	January 2012			Amendments to FOI Act – 1 May 2011
3.0	July 2013			Amendment to decision maker responsibilities
4.0	January 2016			FOI function moved to MPEG. Increased administrative support provided to decision makers. Consider consultation with states and territories following feedback from Deputy Secretaries.
5.0	January 2020			FOI function moved to Legal and Assurance Division. More detail on roles, and updated links. Attached a timeline of process

Where changes to the Policy are:

- significant - the version number will be incremented by 1.0; or
- minor - the version number will be increased by 0.1

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BY THE DEPARTMENT OF HEALTH

FOI UNIT PROCESSING TASK TIMELINE

Days below are a guideline only. Days are subject to change depending on processing being on hold for charges or practical refusal, third party consultation, revision of scope and extensions of time. These aspects will be discussed in the initial meeting.

DAY	ACTION
0-1	<ul style="list-style-type: none">FOI request received<ul style="list-style-type: none">Relevant line area identified and confirmation from decision makerDecision Maker and Action Officer 'For Action' emails sentPrepare acknowledgement notification to applicant
2-4	<ul style="list-style-type: none">Initial meeting organised between FOI Case Officer, Decision Maker and Action OfficerMO and Executive notification to be sent
5-10	<ul style="list-style-type: none">Initial meeting conductedAction Officer to save in-scope documents, schedule of documents and search and retrieval form into FOI folder in TRIM
11	<ul style="list-style-type: none">Charges and consultation notification to applicant sentAcknowledgement notification sent to applicant
12-17	<ul style="list-style-type: none">Seek legal advice if requiredUndertake third party and courtesy consultations if required
18-23	<ul style="list-style-type: none">FOI Case Officer and Action Officer review documents and discuss exemptionsFOI Case Officer organises meeting with Decision Maker and Action Officer to discuss documents/exemptions and draft decision letter
24-26	<ul style="list-style-type: none">Meeting Between FOI Case Officer, Decision Maker and Action OfficerDecision pack provided to Decision Maker for reviewing and signing
26	<ul style="list-style-type: none">Decision to be signedDecision pack to be scanned and sent to FOI Case OfficerDocuments prepared for release (where applicable)
27	<ul style="list-style-type: none">MO and Executive notification sent
30	<ul style="list-style-type: none">Decision and documents (where applicable) to be sent to applicant

Review of charges process for Freedom of Information (FOI) requests

Basic starting position on charges

There are no fees charged under the *Freedom of Information Act 1982 (FOI Act)* for the following:

- making an FOI application;
- applicants seeking access to their own personal information;
- the first five (5) hours of decision-making time; and
- applications not decided within the statutory timeframe.

However, the FOI Act provides a discretion to agencies to impose or not impose a charge for providing access, or impose a charge that is lower than the applicable charge.

The department's starting position is to impose charges to contribute to the costs associated with processing FOI requests. Under the *Freedom of Information (Charges) Regulations 2019 (Charges Regulations)* applicants can be charged:

- \$15.00 per hour for the time spent searching for or retrieving a document;
- \$20.00 per hour for time spent making a decision on a request (after the first 5 hours) including time spent:
 - examining the documents;
 - consulting with third parties;
 - making a copy of documents for provision to an applicant with deletions/redactions;
 - preparing decision letters.

Importantly, the Charges Regulations permit charges to be levied in respect of a *request for access* to a document, even if the decision maker ultimately decides that the documents in question are exempt and not to be released to the applicant. The Charges Regulations specify charges that may be levied for the *provision* of a document to an applicant, such as the cost of producing copies of documents, postage of documents, etc.

The processing period (including any extensions of time) is suspended from the time the department advises an applicant of an estimated charge until the time the applicant pays the deposit and agrees in writing to pay the charge. An applicant can ask the department for a waiver or reduction of the charge on the basis of either public interest or financial hardship. However, the period remains suspended until the department notifies the applicant of its decision as to whether the charge will be waived or reduced, or the applicant pays the deposit.

Under the FOI Act, applicants have 30 calendar days to respond in writing to a notice of liability to pay a charge and either advise the department that they:

- i. agree to pay the charge; or
- ii. contend that the charge has been wrongly assessed, or should be reduced or not imposed, giving reasons for the contention; or
- iii. withdraw the request.

If the applicant does not provide a response within 30 calendar days, the FOI request will be taken to have been withdrawn.

Legislative history of charges

Charges have been provided for in the FOI Act since the Act's commencement in 1982. Section 29 of the FOI Act sets out the process for the imposition of a charge. The amounts and rates of charges, and the circumstances in which an agency may not charge, are set out in the Regulations made under section 94 of the FOI Act. Previously these were the *Freedom of Information (Charges) Regulations 1982*; these Regulations were repealed and replaced by the 2019 Charges Regulations.

Relevant provisions of the FOI Act are extracted below.

29 Charges

- (1) Where, under the regulations, an agency or Minister decides that an applicant is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document, the agency or Minister must give to the applicant a written notice stating:
 - (a) that the applicant is liable to pay a charge; and
 - (b) the agency's or Minister's preliminary assessment of the amount of the charge, and the basis on which the assessment is made; and
 - (c) that the applicant may contend that the charge has been wrongly assessed, or should be reduced or not imposed; and
 - (d) the matters that the agency or Minister must take into account under subsection (5) in deciding whether or not to reduce, or not impose, the charge; and
 - (e) the amount of any deposit that the agency or Minister has determined, under the regulations, that the applicant will be required to pay if the charge is imposed; and
 - (f) that the applicant must, within the period of 30 days, or such further period as the agency or Minister allows, after the notice was given, notify the agency or Minister in writing:
 - (i) of the applicant's agreement to pay the charge; or
 - (ii) if the applicant contends that the charge has been wrongly assessed, or should be reduced or not imposed, or both—that the applicant so contends, giving the applicant's reasons for so contending; or
 - (iii) that the applicant withdraws the request for access to the document concerned; and
 - (g) that if the applicant fails to give the agency or Minister such a notice within that period or further period, the request for access to the document will be taken to have been withdrawn.
- (2) If the applicant fails to notify the agency or Minister in a manner mentioned in paragraph (1)(f) within the period or further period mentioned in that paragraph, the applicant is to be taken to have withdrawn the request for access to the document concerned.
- (3) An agency or Minister must not impose a charge in respect of a request for access to a document, or the provision of access to a document, until:
 - (a) the applicant has notified the agency or Minister in a manner mentioned in paragraph (1)(f); or
 - (b) the end of the period or further period mentioned in that paragraph.
- (4) Where the applicant has notified the agency or Minister, in a manner mentioned in subparagraph (1)(f)(ii), that the applicant contends that the charge should be reduced

or not imposed, the agency or Minister may decide that the charge is to be reduced or not to be imposed.

- (5) Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:
- (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.
- (6) If the applicant has notified the agency or Minister in the manner mentioned in subparagraph (1)(f)(ii), the agency or Minister must take all reasonable steps to enable the applicant to be notified of the decision on the amount of charge payable as soon as practicable but in any case no later than 30 days after the day on which the applicant so notified the agency or Minister.
- (7) If:
- (a) that period of 30 days has elapsed since the day on which the agency or Minister was so notified; and
 - (b) the applicant has not received notice of a decision on the amount of charge payable;
- the principal officer of the agency, or the Minister, as the case requires, is, for all purposes of this Act, taken to have made, on the last day of the period, a decision to the effect that the amount of charge payable is the amount equal to the agency's or Minister's preliminary assessment of the amount of the charge mentioned in paragraph (1)(b).
- (8) If:
- (a) the applicant makes a contention about a charge as mentioned in subsection (4); and
 - (b) the agency or Minister makes a decision to reject the contention, in whole or in part;
- the agency or Minister, as the case requires, must give the applicant written notice of the decision and of the reasons for the decision.
- Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.
- (9) A notice under subsection (8) must also state the name and designation of the person making the decision and give the applicant appropriate information about:
- (a) his or her rights with respect to review of the decision; and
 - (b) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (c) the procedure for the exercise of those rights;
- including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (10) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (8).
- (11) A notice under subsection (8) is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

31 Decision to impose charge—extended period for processing request

Scope

- (1) This section applies if:
 - (a) on a particular day (the **charge notice day**) an applicant in relation to a request receives a notice under subsection 29(1) or (6) to the effect that the applicant is liable to pay a charge in respect of the request; and
 - (b) the notice is received before the end of the period (the **processing period**) applicable under paragraph 15(5)(b) in relation to the request (or that period as extended).

Processing period to be calculated disregarding period when charge unpaid

- (2) In working out the length of the processing period (or that period as extended) for the purposes of paragraph 15(5)(b), disregard the number of days in the period starting on the charge notice day and ending on the earliest occurring of the following days:
 - (a) the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations), whether or not the decision to impose the charge has been considered under section 29, or is the subject of a review under this Act;
 - (b) if the amount of the charge is changed under section 29, or following a review under this Act—the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations) as changed following the review;
 - (c) if, under section 29, or following a review under this Act, a decision is made with the effect that the charge is not imposed—the day the applicant is notified of the decision.

Note: A decision under section 29 relating to the imposition of a charge or the amount of a charge may be the subject of an internal review (see Part VI), an IC review (see Part VII) or review by the Tribunal (see Part VIIA).

94 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, making provision for or in relation to:
 - (a) the making of charges of amounts, or at rates, fixed by or in accordance with the regulations in respect of requests for access to documents or in respect of the provision of access to documents (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges; and
 - (b) the officers who may give decisions on behalf of an agency.
- (2) Without limiting the generality of subsection (1), regulations under that subsection making provision for or in relation to the making of charges:
 - (a) shall not be such that the amount or rate of charge varies according to whether a document is a document of one agency or of an agency included in one class of agency or is a document of another agency or of an agency included in another class of agency;
 - (b) shall, if a charge is made for time that is spent by an agency or a Minister in undertaking any of the following activities:

- (i) searching for or retrieving a document;
 - (ii) making, or doing things related to making, a decision on a request for access; provide for the charge in respect of that activity to be calculated at a single hourly rate that shall be applied by the agency or Minister in respect of any request, regardless of the classification or designation of the officer who undertakes the work involved; and
 - (d) may provide for a charge to be made that takes into account the direct costs incurred by an agency or a Minister in making available an officer to supervise the inspection by a person of any document for which a request for access has been made under this Act.
- (3) Where, as a result of a request, access is given to a document in respect of which the applicant would not be entitled to access under this Act, regulations under this Act relating to charges apply as if the applicant had been given access to that document in accordance with an entitlement under this Act.

Section 30 of the original FOI Act, as passed, provided that an applicant may apply in writing to seek a remission or reduction of the charge.

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THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH

MINUTE**To:**

s47E(c) s47E(d) s47F

Director
Freedom of Information Unit

Charges for Freedom of Information Requests**Purpose**

To obtain your approval on a new procedures document on charges for Freedom of Information (FOI) requests, and to explain the reasons for the changes to the procedures document.

Timing

No specific deadline, but it is timely to review the procedures on charges.

Issues/Sensitivities

1. It is timely to review the department's processes on charges. The department currently has Information Commissioner (IC) reviews on charges on-foot and may need to provide evidence of the processes involved in imposing charges, and justify the decisions to impose charges in those matters.
2. The previous procedure document on charges (TRIM ref. s47E(d)) is long, wordy and out of date.

Summary of changes

The previous procedure document did not provide specific guidance to case officers about how to estimate the likely decision making time for FOI requests, or policy positions about specific practices in Health. The new document includes the following changes:

New content	Rationale for its inclusion
Policy position that charges estimates should be rounded down to an even amount (depending on the complexity of the request e.g. \$98 rounded down to \$90, \$198 rounded down to \$170)	Section 3 of the FOI Act specifies the objects of the Act, including "to facilitate and promote public access to information, promptly and at the lowest reasonable cost." Rounding down to an even number makes it easier to calculate deposit amounts. It also gives the applicant the benefit of the doubt regarding the complexity of the request, and demonstrates some goodwill on the department's behalf when justifying charges to the IC.
Calculator should include a sliding scale of the amount of time per page that can be estimated for decision making, with the number of minutes increasing as complexity increases.	OAIC FOI Guidelines paragraph 4.73 states a common parameter of a charges calculator is 5 minutes per page, with additional 5 minutes per page with exemptions.
Specific examples of FOI requests that are simple, moderately complex, and complex in terms of decision making time.	It is currently unclear to officers how much time to estimate for decision making, particularly how many minutes to allow for each page. Worked examples will assist officers in ascertaining whether a request falls into a simple category

	(requiring only 2 minutes per page for exemptions) or a more complex request.
<p>Policy position that if a request is estimated to take over 40 hours of processing time, the charge will be too high and the department should consider:</p> <ul style="list-style-type: none"> • Consulting with the applicant to reduce the scope of the request; or • Practical refusal reason 	<p>OAIC FOI Guidelines para 3.119 states agencies should not adopt a 'ceiling' in relation to processing times e.g. that a practical refusal reason exists once the estimated processing time exceeds 40 hours.</p> <p>However, both the 2012 IC Review of Charges and the 2013 Hawke Review of the FOI Act recommended a ceiling of 40 hours on processing requests. While the department might choose not to adopt a strict cut-off of processing time before practical refusal, it is useful to provide FOI case officers with a guide as to when a request will be too difficult to process, and the resulting charge too high for the applicant.</p>
<p>Policy position that where a request involves a large number of documents, the case officer should examine a representative sample of the documents to calculate an accurate estimate of decision making time.</p> <p>This should usually be based on a representative sample of 10-15 percent of the documents, but may be fewer documents if the request involves a very large number of documents.</p>	<p>OAIC FOI Guidelines para 3.121 states that a sample of between 10 to 15% of the documents within the scope of the request has been considered in court cases to be an appropriate sample size for the purpose of calculating processing time and deciding whether a practical refusal reason exists.</p> <p>Paragraph 4.76 states that at least 10% of the documents is considered an appropriate sample size to assess processing time; however the sample size may be different for a request involving large numbers of documents.</p>
<p>Instruction to FOI case officers to re-assess the estimated charge and calculate actual costs incurred, after processing the request, and then reduce the charge if necessary (refund the excess to applicant).</p>	<p>Currently, case officers do not usually re-assess estimates or calculate the costs actually incurred at the end of processing an FOI request. This was demonstrated in an IC review case where the department charged for a third party consultation, but no third party consultation actually occurred.</p>

Recommendation

That you approve the new procedures document on charges for use by the FOI Unit.

Approved / Not Approved / Please Discuss / Noted

s47E(c) s47E(d) s47F

Director
/ 12 / 2020

Copy to:

Attachments:

<Background to be provided as an attachment>

Contact officer: s47E(c) s47E(d) s47F
Phone: s47E(c) s47E(d) s47F
TRIM ref:
Cleared by: s47E(c) s47E(d) s47F

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Attachment

History of charges

Charges have been provided for in the FOI Act since the Act's commencement in 1982. Section 29 of the FOI Act sets out the process for the imposition of a charge. The amounts and rates of charges, and the circumstances in which an agency may not charge, are set out in the Regulations made under section 94 of the FOI Act. Previously these were the *Freedom of Information (Charges) Regulations 1982*; these Regulations were repealed and replaced by the *Freedom of Information (Charges) Regulations 2019* (2019 Charges Regulations).

Section 29 of the FOI Act provides for the process by which an agency decides that an applicant 'is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document'. The fact that section 29 refers to a 'charge' as being in respect of a *request for access* to a document or the actual provision of that document, indicates that it is acceptable for an agency to charge an applicant for *processing* an FOI request, even if the applicant's request is refused because the documents are determined to be exempt by the decision maker.

Currently, the FOI Act does not provide for an application fee or a fee for internal review, and neither did the original 1982 version of the Act. However, the FOI Act has previously provided for both fees. The *Freedom of Information Laws Amendment Act 1986* (No. 111 of 1986) introduced a \$30 application fee for an FOI request. That Act also increased the charge for search and retrieval time to \$15 an hour, introduced a charge of \$20 per hour for decision making (including consultation) time, introduced an application fee of \$40 for internal review requests, and reduced the grounds for remission of charges.

The amounts for search and retrieval time and decision-making time have not changed since 1986.

The 2012 IC review and 2013 Hawke review both recommended that a 40 hour ceiling¹ be imposed on processing time; however, the Government did not adopt this recommendation.

The 2012 IC Review recommended that application fees should apply for an applicant seeking IC review of decisions where the applicant has not first sought internal review.

The 2013 Hawke Review recommended that application fees should apply for an applicant seeking IC review of any decision relating to access for non-personal information.

However, the Government did not adopt either recommendation.

The 2012 IC review recommended, and the 2013 Hawke Review agreed, that:

- a flat rate processing charge should apply to all processing activities, including search, retrieval, decision-making, redaction and electronic processing. No charge should be payable for the first five hours of processing time. Processing time that exceeds five hours but is ten hours or less should be charged at a flat rate of \$50. The charge for each hour of processing time after the first ten hours should be \$30 per hour.

However, the Government did not amend the rates.

Both Reviews recommended that agencies create administrative access arrangements where people may request information or documents outside of the formal FOI process, without incurring charges. Many agencies have created an administrative access scheme and published details of such schemes on the agency's website, particularly for requests for personal information.² However, Health has not published any details of such a scheme on the Health website.

There have been a number of Government reviews into the FOI Act, which have affected the imposition of charges. These include:

1995 – joint Australian Law Reform Commission and Administrative Review Council report, 'ALRC 77 – Open government: a review of the federal *Freedom of Information Act 1982*'

¹ 2013 Hawke Review, p 72.

² See, for example, the Services Australia administrative access scheme for access to personal information: <https://www.servicesaustralia.gov.au/organisations/about-us/access-information/personal-information-releases>

2010: Senate Standing Committee inquiry into the draft Freedom of Information Amendment (Reform) Bill 2009 (Cth) and the Information Commissioner Bill 2009 (Cth) (these Bills became the *Freedom of Information Amendment (Reform) Act 2010* and the *Australian Information Commissioner Act 2010*).

2012: Information Commissioner Prof. John McMillan 'Review of charges under the *Freedom of Information Act 1982*: Report to the Attorney-General' (February 2012)

2013: In 2012, Dr Allan Hawke AC was asked to review and report on the operation of the FOI Act and the *Australian Information Commissioner Act 2010*. This review was a legislated requirement from the 2009 reform act. The resulting report was 'Review of the *Freedom of Information Act 1982* and *Australian Information Commissioner Act 2010*' (1 July 2013)

Key outcomes of these reviews

Abolishment of fee for personal records

Abolishment of application fees

Abolishment of fees for internal review

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From: s47E(c) s47E(d) s47F
To: s47E(c) s47E(d) s47F
Subject: File Note of meeting 14.12.20 [SEC=OFFICIAL]
Date: Wednesday, 16 December 2020 12:24:47 PM
Attachments: [image001.png](#)

Meeting to discuss FOI charges procedure document – Monday 14.12.2020

Attendees:

s47E(c) s47E(d) s47F

s47E(c) s47E(d) s47F (via phone)

s47E(c) s47E(d) s47F

s47E(c) s47E(d) s47F

Outcomes sought

- Assistance in how to include practical guidance on estimating decision making time. How can officers estimate decision making time when that activity has not yet occurred?
- What do you want a charges process instruction document to look like?
- What do FOI case officers need to know in the charges process?
- What kinds of things would you like to see in a document that tells case officers how to impose charges?
- What common mistakes have you seen officers make, anywhere in the process?
- What are the specific ways we do things in Health that I should know to include?

Unsure on how case officers can make an assessment around how much time it will take to complete an FOI request.

Can somebody show me in VOLT how to update a case entry to include the charges decision approved by the Director – need to include screenshot of VOLT process into charges procedure document

Can you talk me through exactly how you impose charges currently? What templates are you using? How are you estimating the number of hours? Which parts of VOLT are you updating? Do you discuss the imposition of a charge with the line area at all or is it just the FOI Director? Do decision makers in line areas ever opt to make the decision on charges?

MEETING NOTES

-
s47E(c) s47E(d) s47F – if we are exempting everything in full, there is a lot of time taken in that decision. s47E(c) s47E(d) s47F

That is on a case by case basis.

Case Examples:

- AHPPC – in the first case, we knew we were exempting in full and so we didn't do third

party consultation. At this point in time (2020) we take the context that AHPPC should be able to talk freely amongst themselves and protect Cth/State relationship, but ten years down the track the context has changed and this might be different.

- We have another case at the moment where majority or everything will be exempt in full, complex case, long time doing searches, s47E(d)

We did reduce the charge as it was quite a significant amount, down to \$150.

That shows 2 requests which were both exempt in full but we applied a different approach. **This needs to be highlighted in the charges procedure: context of the case.**

Case example: s47E(d) s47F wants something to do with funding where it was allocated to another organisation not his.

- s47E(d) s47F . Department refused access in full but still charged \$30 for search and retrieval time. Exemptions applied under s 22, 33(a)(i), 47(1)(b), 47F

Compare the simple case to the complex case.

Q: How will officers know the amount of time it will take for decision making when they are making that estimate before the decision has been made?

s47E(c) s47E(d) s47F Process: it is all a process, officers will figure out as they follow the process – how many docs found, how many pages, look at is it too big to process and is it clear? We would do a 24AB notice if too big to process; practical refusal. Do it **EARLY** as we need to follow consultation process with applicant set out in the legislation (informal and then formal consultation).

s47E(c) s47E(d) s47F Remember that the first part is an **ESTIMATE**, only an estimate of what we think it will roughly cost. When we issue charges we would have already had a conversation with the line area on sensitivities, so may not know every specific exemption but they would have given us a view on the percentage of the document that they think will be exempt in full. We will then review those docs ourselves.

s47E(d)

s47E(c) s47E(d) s47F says 2 things have driven the need for this work:

1. We need practical guidance on how we do it, how we calculate how much time to allocate to decision making activities, and what is simple vs complex and using guidelines within that, rounding down but also reviewing charges at the end.
2. We have had IC review cases where we gone out and charged 2 hours for third party consult but not then done the consult, so we had to refund the applicant for that consult amount. s47E(c) s47E(d) prefers us to get it right at the start instead of having to refund the consult amount.

s47E(d)

s47E(d)

MISTAKES: What are some common mistakes that officers make in the process?

s47E(c) s47E(d) s47F Mis-calculating – how do we come up with a consistent method of estimating?

s47E(c) s47E(d) s47F Payment form – applicant tells us credit card details over the phone, we write it on form by hand copy and walk to accounts. **We DO NOT scan the document and email it, for security purposes. We also DO NOT take applicant credit card details via email.**

Need to have very solid reasons to demonstrate why it is financial hardship – can't just put in that you are a senator etc and deserve it due to public interest. Journalist writing an article is not necessarily in the public interest (might be more the journalist's interest eg furthering their career).

We DO NOT get applicants to email credit card details. WE CANNOT SCAN it and send it down

Take the form to accounts: s47E(d)

Processing time is then on hold until CRM Section send us the receipt.

What are the key things you would like to see in this document?

s47E(c) s47E(d) s47F **GUIDANCE ON DECISION MAKING TIME.** Want something to show what is simple, what is moderate, and what is complex. So that a case officer can work out what the actual time is. Don't want 6 different exemptions shown as 2 mins per page for decision making – that is unrealistic. Time taken for a decision maker to READ a document is not same as time taken to CONSIDER exemptions, mark up, redact etc on that same document.

Marking up, thinking about exemptions etc

A worked example and guidance for case officers

Simple: Section 22 and 47F on email addresses

Moderately complex: Broadly Cth/State relations or even one exemption of business info (procurement etc) or National Medical Stockpile (NMS) and national security and business info.

Complex: s47E(d) s47F

where we need to mark up several different types of exemptions. s47E(d)

Requests

, COMPLEX.

VOLT procedures:

Needs to be highlighted that the charges needs to be put into VOLT **ON THE DAY the charges are SENT**, and once the payment is receipted, that means you **put it in VOLT ON THE SAME DAY**.

VOLT guidance??? Need to look at it. But might need to be updated, as VOLT has changed and format in VOLT is different now.

WHO is the applicant/WHAT is the topic? Needs to be factored into whether its sensitive or not.

s47E(c) s47E(d) s47F

ENGAGEMENT WITH YOUR TEAM LEADER – case officers **NEED TO KNOW** that they need to engage with their EL1 and s47E(c) s47E(d) s47F have discussions with team leader, keep team leader informed all the way. Raise things with them

Charges is an ever changing thing – so this is to guide everyone in the process, so it's not like "oh that team member is all over it so we just let her do it". Everybody needs to know how to do it. Charges are part of the existing process of how we process cases anyway.

How to include those worked examples in the document?

Literally take a sample that has been marked up but redactions not yet applied, to show, and then annotate it. With the different colours shown (redactions are in different colours depending on the exemption applied). Shrink down the PDF and put stuff on the side like an image on the page.

s47E(d)

s47E(c) s47E(d) s47F

FOI & Legislation Section

s47E(c) s47E(d) s47F

Legal & Assurance Division | Chief Operating Officer Group
Legal Advice and Legislation Branch
Australian Government Department of Health
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Location: s47E(c) s47E(d) s47F
GPO Box 9848, Canberra ACT 2601, Australia

The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.

Please note that this email and attachments may contain confidential or legally privileged information. Please consult with Legal & Assurance Division before disclosing any part of this email, or attachment, outside the Department. If you receive this email in error, please delete it and contact the sender immediately.

From: s47E(c) s47E(d) s47F
To: s47E(c) s47E(d) s47F [BOUWHUIS, Stephen](#)
Cc: s47E(c) s47E(d) s47F
Subject: Proposal for receiving FOI charge payments [SEC=OFFICIAL]
Date: Thursday, 2 September 2021 10:50:49 AM
Attachments: [image001.png](#)

Thanks s47E(d) – I think your suggestion below is the best solution at the moment. Separately, I s47E(d)

Stephen – for info, applicants are unable to pay FOI charges as there is no infrastructure for this. Some agencies accept payment by electronic transfer but the department is not set up for this.

s47E(c) s47E(d) s47F

Principal Lawyer
Legal Advice & Legislation Branch

Legal and Assurance Division | Corporate Operations Group
Australian Government Department of Health
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Location: s47E(c) s47E(d) s47F
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From: s47E(c) s47E(d) s47F @Health.gov.au>
Sent: Thursday, 2 September 2021 10:34 AM
To: s47E(c) s47E(d) s47F @health.gov.au>
Cc: s47E(c) s47E(d) s47F @health.gov.au>
Subject: For action: Processing of charge payments [SEC=OFFICIAL]

Hi s47E(c) s47E(d) s47F

We currently have applicants wanting to pay charges s47F but given we are all working from home and have no facility to take payments over the phone at the moment.

s47E(c) s47E(d) s47F has been talking with s47E(c) s47E(d) s47F in accounts to organise how they can assist us to take the payment. They are currently doing end of month process so were unable to action for a day or so. But more concerning is they couldn't provide s47E(c) s47E(d) s47F with a process of what would be required moving forward.

Would you please follow up with your counterpart to work a resolution/possible way forward for

charges whilst we are all working remotely. Our proposal was, once the applicant advises us they want to pay the charge, we ask them to provide their contact details so we can pass on to accounts. Then we assume accounts can contact the applicant directly to process the payment and advise us of the payment details. Of course we are happy to accommodate whatever will work for all parties concerned.

Grateful if you could follow up and of course I am always happy to discuss.

Cheers

s47E(c) s47E(d) s47F

Team Leader - Freedom of Information
Legal Advice & Legislation Branch
s47E(c) s47E(d) s47F

Legal and Assurance Division | Corporate Operations Group
Australian Government Department of Health
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From:
To:
Cc:
Subject:
Date:
Attachments:

s47E(c) s47E(d) s47F

RE: For Response: Taking of payments for FOI Charges notices [SEC=OFFICIAL]
Monday, 6 September 2021 11:20:08 AM
[image001.png](#)

Hi s47E(c) s47E(d) s47F

As discussed with you, help desk team and our team, we would like to suggest the following

As we are in lockdown, considered the Legal Advice & Legislation Branch issues and we recommend the following:

1. The FOI team email to CRM with the customer details, contact details and amount who will pay via call centre.
2. CRM will forward the details (including customer number/one time customer) to the helpdesk.
3. The help desk will call customers on to make the credit card payment with the details obtained by FOI team **Or Customer will directly call help desk 6289 1095 to give the credit card payments with details.**
4. The help desk advise CRM that the payment has been made by emailing a snip of the GEP transaction.
5. CRM will then forward the receipt to the FOI team as per the usual process.
6. CRM would also recommend that no cheques are accepted during the lockdown period and only credit card payments are used.(This is mostly the normal payment method).

We recommend that, cheques be discouraged as our mail and banking services are disrupted by COVID restrictions so there could be significant delays in processing and clearing cheques

We can consider the EFT option in the near future, if the following can be confirmed;

1. Customer provide the correct information on their transfer otherwise **it will become an unidentified deposit.**
2. It could be a timing issue as CRM won't have visibility of the transaction until the following day the payment is made
 - If the branch did not have any issue with timing as CRM is unable to confirm on the same day about the receipting (CRM team concerns - normally program area/division like to have the receipting done on the same day the payment is made as it impacts on the program area/division timing to produce the documents.)

Please let us know, if you have any issues with above process and require any more information.

Thanks

Regards

Kind Regards,

s47E(c) s47E(d) s47F

Financial Management Division | Corporate Operations Group

Corporate and Financial Services Branch
Australian Government Department of Health
T: s47E(c) s47E(d) s47F E: s47E(c) s47E(d) s47F @Health.gov.au
Location: s47E(c) s47E(d) s47F
GPO Box 9848, Canberra ACT 2601, Australia
MDP 357

From: s47E(c) s47E(d) s47F @Health.gov.au
Sent: Friday, 3 September 2021 3:49 PM
To: s47E(c) s47E(d) s47F @Health.gov.au
Cc: s47E(c) s47E(d) s47F @health.gov.au; s47E(c) s47E(d) s47F
s47E(c) s47E(d) s47F @health.gov.au; BOUWHUIS, Stephen <Stephen.BOUWHUIS@health.gov.au>
Subject: For Response: Taking of payments for FOI Charges notices [SEC=OFFICIAL]
Importance: High

Hi s47E(c) s47E(d) s47F

I understand the FOI admin support s47E(c) s47E(d) s47F has been speaking with s47E(c) s47E(d) s47F on how FOI will be able to take payments from applicants who want to settle their charges notices whilst we are working remotely.

Given the FOI legislation has very strict guidelines on not complicating the charges process or delaying the processing time due to poor procedures, I am conscious we need to find a solution as soon as possible on how we can assist these applicants. We currently have half a dozen applicants wanting to make payment to the department so they can gain access to documents.

Our proposal was, once the applicant advises us they want to pay the charge, we ask them to provide their contact details so we can pass on to your area. Then we assumed your team would be able to contact the applicant directly and process their payment. Once that went through you could advise the FOI Team of the payment details.

Of course we are happy discuss and accommodate whatever will work for all parties concerned. I am new to the department, so I apologise in advance, but I am unaware of the usual process and our admin support person only works part time.

However, I do need to find a remedy quickly so I would like to discuss what I can do to make this process manageable and as easy and practicable as possible for everyone. If you are not the correct person to talk to, I would appreciate some direction as to whom I should redirect this message.

Many thanks

s47E(c) s47E(d) s47F

Team Leader - Freedom of Information
Legal Advice & Legislation Branch
s47E(c) s47E(d) s47F

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THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH

From: **s47E(c) s47E(d) s47F**
 To:
 Cc:
 Subject: charges notices - amount payable, deposit and rounding [SEC=OFFICIAL:Sensitive]
 Date: Tuesday, 7 September 2021 1:54:38 PM
 Attachments: [image001.png](#)

Hi team

Similar to clearance letters, please use a Subject line along the lines of **Charge Notice for clearance – FOI 8293 – Samantha**. Also, I'm happy to receive draft charges notices with the calculator and just the FOI no. That is, no need to include info in the covering email unless it's something that could be raised by or with seniors or Ministers – eg this applicant submitted a request for a large volume of documents, we provided options to reduce the scope and provided an estimate of the charges, but he still wants all documents. When we calculate the preliminary charges, it is preferable to round the amounts down. This is because the final number of documents, pages, and/or redactions often differs from the initial estimate, but if we've rounded down the amount, this is easier to explain down the track.

I've set an example out below – happy to chat through.

In this example, about 20% of pages will be disclosed in full, 45% redacted in part and the remaining 35% exempt in full. I've suggested 10 minutes for preparing each set of 10 documents for the schedule. I know some of you include 2 minutes, but I suspect you (and/or the line area action officer) actually spend much more time than that preparing the schedules.

FOI CHARGES ESTIMATE TOOL - SIMPLE			
(insert data in shaded boxes only)			
GENERAL DATA ESTIMATE			
(terms in red are explained on the notes sheet)			
Pages (approx) of material in scope		389	in A4 pages
Number of discrete relevant documents		16	
Percentage (approx) of pages to disclose in whole		20%	
Percentage (approx) of pages requiring redaction		45%	
Percentage (approx) of content that is applicant's own personal information		0%	
Number of third parties to consult		2	
PROCESS - search and retrieval			
	TIME per task	charge time:	COST @ \$15 per hr
Time required to execute searches - enter hours (including part hours eg 0.5)	4.1	4.1000	\$61.50
Preparing schedules detailing all relevant documents (basic data entry eg doc no, date, description) - enter minutes per 10 documents	10	0.2667	\$4.00
Search & Retrieval Subtotal		4.3667	\$65.50
PROCESS - decision-making			
	TIME per task	charge time:	COST @ \$20 per hr
Examine relevant pages for decision making - enter minutes per page	2	12.9667	\$259.33
Redacting pages that are partially disclosed - enter minutes per page	2	5.8350	\$116.70
Consult third parties - enter average per third party in hours	2	4.0000	\$80.00
Preparation and notification of decision			
Writing statement of reasons - enter hours	2	2.0000	\$40.00
Complete schedule by recording decision @ 4 documents per minute		0.0667	\$1.33
Decision-making Subtotal (before deduction of 5 hours)		24.8683	\$497.37
Decision-making Subtotal (after deduction of first 5 hours free for all)		19.8683	\$397.37
ACCESS - view / inspect			
	TIME per task	charge time:	COST @ \$6.25 per 1/2 hr
Supervised inspection of documents - minutes per page		0.0000	\$0.00
Supervised inspection of audio/visual material - insert total duration of material in minutes then add 30 mins set-up and pack-up time		0.0000	\$0.00
Inspection/Viewing Subtotal		0.00	\$0.00
ACCESS - copy and post			
		PAGES	COST @ 10c a page
Photocopies of estimated released pages (including those with deletions) - set to 0 if providing electronically			\$0.00
Electronic media (eg USB drive, CD-ROM) and/or postage - insert estimated cost of materials			
Access Subtotal			\$0.00
ESTIMATED TOTALS			

NUMBER OF RELEASED PAGES		252.85
TIME (in hours)		24.24
TOTAL COST		\$462.87
Financial hardship/public interest discount (as %)	0%	\$0.00
TOTAL COST (after discount)		\$462.87
MAXIMUM DEPOSIT		\$115.72

In this example email, I've rounded the highlighted amounts down.

Preliminary Assessment

In accordance with section 29 of the FOI Act and the *Freedom of Information (Charges) Regulations 2019*, the Director's preliminary assessment of the charge you are liable to pay is \$440.

This has been calculated as follows:

search and retrieval time (including time spent locating relevant files and collating relevant documents contained on those files)	4 hours @ \$15.00 per hour	\$60.00
decision making time (including time spent examining the documents, considering exemptions, undertaking consultation, writing the decision and preparing any documents for release)	24 hours @ \$20.00 per hour Less first 5 hours free	\$480.00 (\$100.00)
TOTAL		\$440.00

Deposit

The Director has also decided you are required to pay a deposit of \$100.00.

Thanks everyone!

s47E(c) s47E(d) s47F

Principal Lawyer
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FOI Credit Card Payments

Company Code	1000		
Customer number	CO-9001		
GL	s47E(d)		
Cost Centre	s47E(d)		
Tax code	s47E(d)		
Email receipt to	FOI@health.gov.au Subject: Receipt FOI No. xxxx		
FOI Number	Name, Address and Phone number of Applicant	Amount to be paid either deposit or full amount	Comments