



Australian Government
**Department of Employment
and Workplace Relations**

Your Ref
Our Ref [LEX00]

Name
Job Title
Organisation
Address lines
SUBURB STATE Postcode

By email:

Dear

Your Freedom of Information request - charge

I refer to your [revised] request, received by the Department of Employment and Workplace Relations (department) on [DATE], for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

[QUOTE ORIGINAL REQUEST OR IF REQUEST REVISED, QUOTE REVISED REQUEST]

Preliminary assessment of the charge

Under the FOI Act, I have decided that you are liable to pay a charge for the processing of your request. My preliminary assessment of the charge is [NUMBER], calculated as follows:

Search and retrieval time: [NUMBER] hours, at \$15.00 per hour	\$
Decision-making time including consultation with relevant third parties, after deduction of 5 hours*: [NUMBER] hours, at \$20.00 per hour	\$

TOTAL**\$**

*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

I am advised that the department has in its possession approximately [NUMBER] documents with approximately [NUMBER] pages relevant to your request.

Required action

If you would like the department to continue processing your request, you must notify the department in writing within 30 days of receiving this notice that you:

- agree to pay the charge
- wish to contend that the charge has been wrongly assessed, should be reduced or not imposed or both or
- withdraw your request.

If you do not respond within 30 days, your request will be taken to have been withdrawn by the operation of the FOI Act.

Option - pay the charge

As the charge exceeds \$25, you are required to pay a deposit of \$[NUMBER] within 30 days of receiving this notice. You may elect to pay the charge in full at this point.

Payment can be made by credit card by completing the attached credit card authorisation and sending a scanned copy to foi@dewr.gov.au.

If you are unable to pay by credit card, please contact us on the above email.

Please note that the charge is a fee for processing your request, not a payment for access to documents. Payment of the charge does not guarantee you access to any or all of the documents you have requested. Access to documents will be considered by the decision maker in accordance with the FOI Act.

Option - seek reduction or non-imposition of the charge

If you want to ask the department to reduce or not to impose the charge, you should tell us why and give us evidence to support your reasons. You may wish to tell us:

- whether paying the charge would cause you financial hardship and/or
- whether access to the documents is in the general public interest or in the interest of a substantial section of the public.

We must take these matters into account in deciding whether or not to reduce or not impose the charge.

Time limits for processing your request

Under the FOI Act, the time limit for processing your request is suspended from today until the day following payment of the charge (in full or the required deposit) or, if applicable, the day following a decision not to impose the charge.

As your request covers documents that contain information about another person/other persons, I need to ask that person/those persons about releasing their information before making a decision on your request. For this reason, the department has extended the time for processing your request by 30 days under the FOI Act. [DELETE IF NOT RELEVANT]

As your request covers documents that contain information concerning the business, commercial or financial affairs of an organisation or a person's business or professional affairs, I need to ask that organisation or person about the release of that information before making a decision on your request. For this reason, the department has extended the time for processing your request by 30 days under the FOI Act. [This is relevant to 47G only, DELETE IF NOT RELEVANT]

As your request covers documents, originating with, or received from a State, I need to consult with the relevant State about releasing the relevant documents before making a decision on your request. For this reason, the department has extended the time for processing your request by 30 days under the FOI Act. [DELETE IF NOT RELEVANT]

To assist you, I have set out the relevant sections of the FOI Act at **Attachment A**.

Further assistance

As an alternative, you may wish to consider revising the scope of your request. If you would like to discuss this, please email foi@dewr.gov.au.

Yours sincerely

First name
Authorised decision maker
Freedom of Information Team
Department of Employment and Workplace Relations

Date

Attachment A**Relevant sections of the *Freedom of Information Act 1982***Charge

Section 29(1) of the FOI Act provides that, where the department 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 department must give the applicant written notice. The notice must state, among other things, that the applicant must within 30 days after the notice was given tell the department in writing that the applicant:

- agrees to pay the charge
- wishes to contend that the charge has been wrongly assessed or should be reduced or not imposed or both or
- wishes to withdraw the request.

Under section 29(2) of the FOI Act, if the applicant does not do one of these things within 30 days, the request will be taken to have been withdrawn.

Consultation

Section 27 of the FOI Act provides that if the department receives a request for access to documents containing information in relation to the business, commercial or financial affairs of an organisation or a person's professional affairs and believes the organisation or person may object to the release of the documents, the department is required to consult with that organisation or person before making a decision on access to the documents.

Section 27A of the FOI Act provides that if the department receives a request for access to documents containing the personal information of another person and believes the person may object to the release of the documents, the department is required to consult with that person before making a decision on access to the documents.

Section 26A of the FOI Act provides that where consultation arrangements have been entered into between the Commonwealth and a State and it appears to the department that the State might reasonably wish to contend that the requested documents are conditionally exempt under section 47B and granting access would, on balance, be contrary to the public interest, the department must not give access to the documents unless consultation has taken place.

Section 15(6) of the FOI Act provides that when the department consults with a person under section 27 and/or section 27A of the FOI Act, the 30 day period for processing a request under the FOI Act is extended by 30 days.

Attachment B

Credit Card Authorisation

Use this form to pay a Freedom of Information charge by credit card

Applicant's details			
Name		Phone number	
Credit card details			
Credit card type			
Card holder's name			
Credit card number			
Expiry date		CCV number	
Amount			
Signature			
Date			

Privacy statement

Your personal information is collected by the Department Employment and Workplace Relations for the purposes of processing the payment of a charge imposed under the *Freedom of Information Act 1982* and related purposes. If you do not provide some or all of the information requested, the department may be unable to process your credit card payment. Your personal information may be disclosed to other parties where you have agreed, or where it is otherwise permitted by law. The department's Privacy Policy, including information about how to make a complaint and access to and correction of your personal information, can be found at <https://www.dese.gov.au/privacy>.



Australian Government
**Department of Employment
and Workplace Relations**

Your Ref
Our Ref [LEX00]

Name
Job Title
Organisation
Address lines
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By email:

Dear

Your Freedom of Information request - charge decision

I refer to your [revised] request, received by the Department of Employment and Workplace Relations (department) on [DATE], for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

[QUOTE ORIGINAL REQUEST OR IF REQUEST REVISED, QUOTE REVISED REQUEST]

My decision

I have decided to affirm/reduce/not impose the charge of \$[NUMBER] to \$[NUMBER].

The reasons for my decision, including relevant sections of FOI Act, are set out at **Attachment A**.

Payment details [DELETE IF NOT REQUIRED]

If you would like the department to continue processing your request, you must respond to the department within 30 days after receiving this notice. If you do not respond within 30

days, your request will be taken to have been withdrawn and no further action will be taken by the department.

As the charge exceeds \$25, you are required to pay a deposit of \$[NUMBER] within 30 days of receiving this notice. You may, of course, elect to pay the charge in full at this point.

Payment can be made by credit card by completing the attached credit card authorisation and sending a scanned copy to foi@dewr.gov.au.

If you are unable to pay by credit card, please contact us on the above email.

Time limits for processing your request [AMEND AS REQUIRED]

Under the FOI Act, the time limit for processing your request was suspended from the day you received the department's preliminary assessment of the charge until the day following payment of the deposit or the day following the payment of the charge in full./the day following a decision not to impose the charge. As I have decided not to impose the charge [and the time for processing your request was extended by 30 days to allow the department time to consult with relevant third parties], a decision is now due to you by [DATE].

You can ask for a review of my decision

If you disagree with any part of the decision, you can ask for a review. There are two ways you can do this. You can ask for an internal review by the department or an external review by the Australian Information Commissioner.

You can find information about your rights of review under the FOI Act, as well as information about how to make a complaint at **Attachment B**.

Further assistance

If you have any questions, please email foi@dewr.gov.au.

Yours sincerely

First name
Authorised decision maker
Freedom of Information Team
Department of Employment and Workplace Relations

Date

Attachment A

REASONS FOR DECISION**What you requested [AMEND AS APPROPRIATE]**

- [QUOTE ORIGINAL REQUEST]

On [DATE], the department contacted you about your original request.

OR

On [DATE], the department wrote to you providing a notice of intention to refuse your request under section 24AB of the FOI Act as your request was unclear/too big to process.

On [DATE], you revised your request as follows:

[QUOTE REVISED REQUEST]

What I took into account [AMEND AS APPROPRIATE]

In reaching my decision, I took into account:

- your original request dated [DATE] and your revised request dated [DATE]
- other discussions and correspondence with you
- the documents that fall within the scope of your request
- consultations with departmental officers about the nature of the documents and the operating environment and functions of the department
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- the *Freedom of Information (Charges) Regulations 2019*
- the FOI Act.

Reasons for my decision

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

I have decided to affirm/reduce/not to impose the charge of \$[NUMBER] to \$[NUMBER]. My findings of fact and reasons for this decision are discussed below.

Preliminary assessment of charge

On [DATE], I wrote to you to advise you that I had decided to impose a charge of \$[NUMBER] for processing your request.

My preliminary assessment of that charge was calculated as follows:

Search and retrieval time: [NUMBER] hours, at \$15.00 per hour	\$
Decision-making time (*after deduction of 5 hours): [NUMBER] hours, at \$20.00 per hour	\$

TOTAL	\$
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*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

As a preliminary matter, I have reviewed my calculation of the charge. I am satisfied that the charge has been calculated correctly.

OR

On review, I have noted that an error was made in calculating the preliminary assessment of the charge. I have re-assessed the calculation of the charge as follows:

Search and retrieval time: [NUMBER] hours, at \$15.00 per hour	\$
Decision-making time (*after deduction of 5 hours): [NUMBER] hours, at \$20.00 per hour	\$

TOTAL	\$
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*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

Your contentions

On [DATE], you contended that the charge for processing your request under the FOI Act should be reduced or not imposed on the grounds of [REASON]. Specifically, your correspondence provided:

[QUOTE RELEVANT CONTENTIONS]

Financial hardship

Under section 29(5)(a) of the FOI Act, I am required to consider whether payment of the charge would cause financial hardship to you.

Paragraph 4.101 of the FOI Guidelines relevantly provides:

Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself and your family, or other people for whom you are responsible.

The FOI Guidelines further provide that an applicant relying on the grounds of financial hardship would ordinarily be expected to provide some evidence of financial hardship, such as receipt of an income support payment or evidence of income, debts or assets. In this

regard, I note that you have provided [DESCRIBE EVIDENCE OR STATE THAT NO EVIDENCE PROVIDED].

On the basis of the information that you have provided, I am satisfied that payment of the charge would cause financial hardship to you.

OR

You have not provided evidence in relation to your financial status, accordingly I have no basis to be, and am not satisfied that the payment of the charge would cause financial hardship to you.

OR

While I note that you have provided evidence of your financial status, I am not satisfied that the payment of the charge would render you unable to provide the above listed necessities to you, your family or other people for whom you are responsible. This is because [REASON NOT SATISFIED].

Public interest

Under section 29(5)(b) of the FOI Act, I am required to consider whether giving access to the documents would be in the general public interest or the interest of a substantial section of the public.

Paragraph 4.107 of the FOI Guidelines relevantly provides:

An applicant relying on s 29(5)(b) should identify or specify the general public interest or the substantial section of the public that would benefit from this disclosure (s 29(1)(f)(ii)). This may require consideration both of the content of the documents requested and the context in which their public release would occur. Matters to be considered include whether the information in the documents is already publicly available, the nature and currency of the topic of the public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents.

The Guidelines further provide that there is no presumption that the public interest test is satisfied by reason only that the applicant is a Member of Parliament, a journalist or a community or non-profit organisation. The Guidelines further provide that it is necessary to go beyond the status of the applicant and to look at other circumstances.

I have noted your submissions in relation to [CAUSE] and the relevance of this to the general public interest or a substantial section of the public. Specifically, I have noted that [DESCRIBE PUBLIC INTEREST]. On this basis, I am satisfied that there is a public interest in the disclosure of the information.

OR

You have not provided any submissions in relation to the public interest in the case of these documents.

OR

While I have noted your submissions in relation to the public interest, I am not satisfied that it would be in the general public interest or the interest of a substantial section of the public to give access to the documents. This is because [REASON].

Optional paragraph where charge reduced [DELETE IF NOT REQUIRED]

I find that the reduced charge is reasonable and fairly reflects the public interest in giving access to some of the material and the fact that there is a cost associated with the processing of your request.

It is important to note that the public interest test in paragraph 29(5)(b) of the FOI Act is different to the public interest test in subsection 11A(5) of the FOI Act that applies to conditionally exempt documents. This means that while the public interest test might be satisfied for the purposes of a decision to reduce a charge, a document might still be exempt from release because there is, on balance, countervailing harm which offsets the public interest of giving access.

Other matters [DELETE IF NOT REQUIRED]

Under section 29(5) of the FOI Act, I may take into account other matters in determine whether or not to impose the charge.

I have considered your submissions in relation to [OTHER REASON]. Specifically, I have considered [OTHER REASON].

On the basis of the information you have provided, I am/am not satisfied that [OTHER REASON] warrants a reduction or non-imposition of the charge. This is because [REASON]. As such, I have decided to affirm/reduce the charge to \$[NUMBER]/not to impose the charge.

Conclusion

For the reasons set out above, [choose from the following options:]

I am satisfied that payment of the charge would cause financial hardship to you. As such, I have decided to reduce the charge to \$[NUMBER]/not to impose a charge.

OR

I am not satisfied that the payment of the charge would cause financial hardship to you. As such, I have decided to affirm the charge.

OR

I am satisfied that there is a public interest in the disclosure of the information. As such, I have decided to reduce the charge to \$[NUMBER]/not to impose a charge.

OR

I am not satisfied that there is a public interest in the disclosure of the documents. As such, I have decided to affirm the charge.

Attachment B

YOUR RIGHTS OF REVIEW**Asking for an explanation of an FOI decision**

Before you ask for a formal review of an FOI decision, you can contact us and we will explain the decision to you.

Asking for a formal review of an FOI decision

If you still believe the decision is incorrect, the FOI Act gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

- an internal review officer in the department and/or
- the Australian Information Commissioner.

There are no fees for applying for a formal review.

Applying for an internal review by an internal review officer

If you apply for internal review, a different decision maker to the decision maker who made the original decision will review your request. The internal review decision maker will consider all aspects of the original decision afresh and decide whether the decision should change.

An application for internal review must be made in writing within 30 days of receiving this letter. You can lodge your application:

Post: Commercial and Information Law Branch
 Department of Employment and Workplace Relations
 Location Code: C50MA1
 GPO BOX 9828
 CANBERRA ACT 2601

Email: foi@dewr.gov.au

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can lodge your application in one of the following ways:

Online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Complaints to the Australian Information Commissioner

Australian Information Commissioner

You may complain to the Australian Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Australian Information Commissioner must be made in writing and can be lodged in one of the following ways:

Online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001



Australian Government

Department of Education, Skills and Employment

Freedom of Information Procedure Manual

SCHOOLS AND CORPORATE LEGAL BRANCH
LEGAL DIVISION

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Freedom of Information Manual

Purpose

The purpose of this FOI Manual is to detail the procedures related to processing requests under the FOI Act at the department to ensure an efficient and consistent approach. It may be appropriate, in certain circumstances, to depart from the procedures set out in this document. However, such departures should not occur where it would result in the statutory requirements of the FOI Act not being met.

Ultimately, the procedures in this manual do not replace the need to have regard to the FOI Act and FOI Guidelines. Decisions made under the FOI Act must be consistent both with the requirements of the Act and with the general principles of good decision making (see FOI Guidelines '[Principles of good decision making under the FOI Act](#)').

s 22(1)

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s 22(1)

Processing requests for information stored in an electronic form

The DM needs to check with the line area whether the requested information is contained in the department's systems and what work is required to produce a document. The DM then decides whether section 17 applies and whether production of the document would amount to a substantial and unreasonable diversion of the department's resources from its other operations. If the department can produce a document, the DM should consider specific charges applicable to section 17 requests.

Relevant sections: 17, 29, and [Freedom of Information \(Charges\) Regulations 2019](#) Part 2, Item 4 of the table.

s 22(1)

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Charges

Preliminary assessment of processing charge

The DM should estimate the charge following return of the search minute and documents using the [AGS FOI Calculator](#), and prepare a file note documenting the reasons for reaching the preliminary estimate.

Checklist for charge calculations

- check the number of pages and documents.
- consider the line area's estimate regarding the number of pages considered sensitive and likely to be exempt.
- consider the line area's estimate of the amount of time for search and retrieval, noting that the department is generally not able to charge an applicant for time spent searching for misfiled or missing documents.
- ensure appropriate reductions are applied, for example, if part of the documents caught by the request are the applicant's own personal information, the charge should be reduced proportionally as access to a person's personal information is free.

Relevant sections: 29(1), and [Freedom of Information \(Charges\) Regulations 2019](#)

[Notice to applicant – preliminary estimate of charges](#)

Charge decision

If an applicant seeks reduction or non-imposition of a charge, the DM must make a charge decision, freshly considering the charge calculation, and any submissions by the applicant.

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Freedom of Information Manual

The charge calculation should also be re-visited if the number of documents in scope are reduced, and at the point of making the primary decision.

Relevant sections: 29(4), 29(5), and [Freedom of Information \(Charges\) Regulations 2019](#)

Charge internal review

If an applicant seeks internal review of the charge decision, a separate DM at a more senior level than the original DM should prepare an internal review decision.

For more information on calculating and imposing a charge, as well as the process for reduction or waiver of charges, please see this [link](#).

Relevant sections: 53A(e), 54, 54C

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