



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2009/32

Mr Daming He
42 Stirling Street
FOOTSCRAY VIC 3011

Dear Mr He

Thank you for your email of 17 December 2010 seeking review of a decision of 10 December 2010 by Mr Alex Anderson, Assistant Secretary, Legal Policy Branch, to impose (reduced) estimated charges of \$571.45 in respect of your FOI request.

Ms Philippa Lynch, First Assistant Secretary, Government Division is the decision-maker for your request for review of the processing charges.

Ms Lynch acknowledges the regrettable delay in finalising your request.

The decision

Ms Lynch has decided to accept your request as a request for internal review and decided to waive all FOI processing charges.

Reasons for the decision

In a letter dated 10 December 2010, you were advised of a decision by Mr Alex Anderson, Assistant Secretary, Legal Policy Branch, that you were liable to pay FOI processing charges in respect of the request, and that the amount of the charges was estimated to be \$571.47.

Subsection 54(1)(d) of the Act allows for a decision under section 29 relating to imposition of a charge or the amount of a charge to be reviewed.

Your FOI request was received prior to the commencement of amendments to the FOI legislation on 1 November 2010. In cases where an initial FOI request was made prior to 1 November 2010, decision-makers must apply the FOI Act as it was immediately prior to the commencement of the amendments. In addition, the FOI guidelines¹ in force prior to 1 November 2010 provide authoritative advice on processing FOI requests and applying the FOI Act as it was prior to 1 November 2010.

In deciding whether processing charges should be reduced or not imposed (subsection 29(5) of the Act), the department must consider issues of public interest and whether or not requiring payment of the charge would cause financial hardship to the FOI applicant.

¹ Department of the Prime Minister and Cabinet, *FOI Guidelines – Fees and Charges*, 4, <<http://www.pmc.gov.au/foi/guidelines.cfm>>.

While there is no suggestion of financial hardship, Ms Lynch has considered your submissions outlined in your email of 17 December 2010 that it would be in the public interest to waive charges in relation to the request.

FOI Guidelines provide that there are a number of factors that agencies need to consider in determining whether access to the documents sought would be in the public interest or a substantial section of the public:

- 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.

In making this decision Ms Lynch has given careful consideration to your stated public interest reasons and had regard to the contents of any potentially relevant documents in the department.

Having considered the functions of the department, the subject-matter of the documents sought and the context in which they are proposed to be used, the decision-maker is not satisfied that release of the particular documents in the department would add any value to information that is already in the public domain or contribute to the public's right to participate in and influence the processes of government decision making and policy formulation on an issue of concern to them in terms necessary for waiver of the processing charges within the terms of section 29 of the FOI Act. Whilst there may be some public, academic or political interest in the subject matter of your request globally, she does not consider that there is likely to be any substantial benefit to the public generally or any substantial section of it in release of the information in the department.

The decision-maker considers that the following factors favour the non-imposition of charges in this instance:

- Subsection 3(2) of the FOI Act requires that discretions conferred by the FOI Act be exercised as far as possible to facilitate and promote the disclosure of information promptly at the lowest possible cost.
- The public interest in obtaining access to government-held documents.

The decision-maker considers that the following factors favour the imposition of an application fee in this instance:

- Very little, if any, benefit would flow to the public from access to the particular documents in the department.
- The public interest in FOI applicants contributing to the cost of processing their request.

Having considered the matters set out above the decision-maker is of the view that, on balance, giving access to the documents in the department is not in the general public interest or in the interests of a substantial section of the public in terms necessary for waiver of the charges in accordance with subsection 29 of the FOI Act. Ms Lynch is therefore not persuaded that the charges should be waived on public interest grounds.

Payment of your application fee was received on 4 May 2010, thereby validating your request. In accordance with section 15(5) of the FOI Act the department was required to notify you of a decision within 30 days:

Section 15

(5) On receiving a request, the agency or Minister must:

.....

(b) as soon as practicable but in any case not later than the end of the period of 30 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified of a decision on the request (including a decision under section 21 to defer the provision of access to a document).

While your request was made prior to 1 November 2010, changes to the charging arrangements for FOI requests lodged on or after 1 November 2010 provide that there is no charge if the agency fails to make a decision on your request within the statutory time limit.

In recognition of the delays that occurred in the processing of your request and the changed charging arrangements noted above, Ms Lynch has decided to waive all processing charges.

Effect of decision

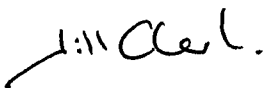
As a consequence of this decision you are not required to pay any charges in respect of your application for access.

Review rights

I enclose a statement setting out your rights of complaint and review.

Should you wish to discuss any aspect of your request, I can be contacted by telephone on (02) 6271 5849.

Yours sincerely



Jill Clark
Acting Senior Adviser
Access and Administration Review Section
Legal Policy Branch

17 February 2011