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Australian Government

Comcare

FREEDOM OF INFORMATION CHARGES POLICY

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Contents

Purpose 1

Scope..... 1

Background 1

Guiding principles 1

Opportunities to obtain access outside the FOI Act..... 2

When to consider imposing a charge 2

Charges that cannot be imposed 2

Charges that may be imposed 3

Estimating a charge..... 3

Notifying a charge 4

Reduction or waiver of charges 4

Deposits 4

Collecting the remainder of a charge 5

Correction of final charge 5

Purpose

1. This document details Comcare's policy on charging for the release of documents requested under the [Freedom of Information Act 1982](#) (**FOI Act**).

Scope

2. Comcare's Charge Policy is consistent with the FOI Act, the [Freedom of Information \(Charges\) Regulations 2019](#) (**Charges Regulations**), and [Part 4 of the guidelines](#) issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**).

Background

3. Comcare may impose a charge in respect of a request for access to a document or for providing access to a document, under section 29 of the FOI Act. The charge must be assessed in accordance with the Charges Regulations.
4. The Information Commissioner has published [guidance and advice](#) that helps decision makers identify the steps in calculating a charge.
5. Decision on the application of charges will be made by the authorised decision maker processing the request in consultation with their supervisor.

Guiding principles

6. The amount of any charge imposed should be:
 - a. determined bearing the objects of the FOI Act in mind
 - b. reasonable, taking into account all relevant factors
 - c. proportionate to the cost of making a decision and providing access, as well as any general public interest supporting release of the requested documents (see section 29(5)(b) of the FOI Act).
7. Where the cost of calculating and collecting a charge might exceed the cost to Comcare to process the request, it may generally be more appropriate not to impose a charge.
8. The objects of the FOI Act provide the basis for the following principles relevant to charges under the FOI Act:
 - a. A charge must not be used to unnecessarily delay access or to discourage an applicant from exercising the right of access conferred by the FOI Act.
 - b. A charge should fairly reflect the work involved in providing access to documents.
 - c. Charges are discretionary and should be justified on a case by case basis.
 - d. A decision to impose a charge should be transparent.

Opportunities to obtain access outside the FOI Act

9. If an applicant requests claim related information, you could seek their confirmation to process their request as a section 59 request (under the [Safety, Rehabilitation and Compensation Act 1988](#)) instead of the FOI Act. You must ensure that they also withdraw their FOI request, or you will still be required to process it under the FOI Act.
10. There is a range of Comcare reports and operational documents on [Comcare's Information Publication Scheme](#), including Comcare's Claims Manual.
11. There are also some documents accessible on Comcare's [Freedom of information Disclosure Log](#) from previous FOI requests already processed by Comcare.

When to consider imposing a charge

12. It is up to the authorised decision maker's discretion to impose a charge, however you should consult with your supervisor early if you are considering to impose a charge. It may be appropriate to impose a FOI charge where:
 - a. the applicant has requested access to a substantial volume of documents and significant work will be required to process the request
 - b. the documents are primarily of interest only to the applicant and are not of general public interest or of interest to a substantial section of the public
 - c. the information in the documents has already been published by Comcare and the documents do not add to the public record
 - d. the applicant can be expected to derive a commercial or personal benefit or advantage from being given access and it is reasonable to expect the applicant to meet all or part of the charge.

Charges that cannot be imposed

13. There is no application fee for a FOI request.
14. Comcare cannot impose a charge:
 - a. for giving access to an individual's own personal information (s 7(1) of the Charges Regulations)
 - b. if it fails to make a decision on the request within the statutory processing period – the statutory period includes any extensions of time under ss 15(6), 15(8), 15AA and 15AB, but not s 15AC of the FOI Act (ss 7(2) and (3) of the Charges Regulations); Comcare must refund any deposit paid in these circumstances (s 12(3)(b) of the Charges Regulations)
 - c. for making an internal review decision.
15. An FOI request cannot be 'split' into parts. Therefore, an applicant cannot be found liable to pay a charge for a portion or part of a request. A charge can only be imposed on the request as a whole.

Charges that may be imposed

16. The charges that may be imposed by Comcare with respect to a request for access to a document are specified in Schedule 1 of the Charges Regulations. While the decision to impose a charge is discretionary, calculation of the charge must be in accordance with the amounts specified in Schedule 1 of the Charges Regulations. Part 1 of Schedule 1 specifies charges related to making a decision on a request and Part 2 specifies charges for giving access to a document.
17. The most common charges are:

Activity item	Charge
Search and retrieval: time spent searching for or retrieving a document	\$15 per hour
Decision making: time spent deciding to grant or refuse a request, including examining documents, consulting other parties, making deletions, or notifying any interim or final decision on the request	First five hours: Nil Subsequent hours: \$20 per hour
Photocopy: a photocopy of a written document	\$0.10 per page
Other copies: a copy of a written document other than a photocopy	\$4.40 per page
Inspection: supervision by an officer of an applicant's inspection of documents or the hearing or viewing of an audio or visual recording	\$6.25 per half hour (or part thereof)
Delivery: posting or delivering a copy of a document at the applicant's request	Cost of postage or delivery

18. The Charges Regulations set out an hourly rate that applies regardless of the classification or designation of the officer who undertakes the work. The Charges Regulations do not specify a method for charging for part of an hour of search or retrieval or decision-making time. If such a charge is to be imposed, it should be calculated on a proportionate basis, for example, 30 minutes work should be charged at 50 percent of the hourly rate.

Estimating a charge

19. Comcare should undertake a preliminary assessment of the charge. The preliminary assessment can be the work already done by Comcare (search and retrieval for documents) or an estimated charge for the work still to be done (examination of documents, drafting the decision).
20. An estimated charge must be as fair and accurate as possible. Comcare recommends obtaining an estimate of the processing time by sampling at least 10% of the documents at issue.
21. Please ensure to use the Charges Calculator on Content Manager when undertaking a preliminary assessment of the charge. This should be provided to your supervisor for

consideration along with the draft notice to the applicant before imposing the charge on the applicant. It is important to keep records on your preliminary assessment of charges.

Notifying a charge

22. An applicant must be given written notice when Comcare decides the applicant is liable to pay a charge. The notice must specify:
 - a. that the applicant is liable to pay a charge
 - b. Comcare's preliminary assessment of the charge and the basis for the calculation
 - c. the applicant's right to contend that the charge has been wrongly assessed or should be reduced or not imposed
 - d. in considering any contention, Comcare must take into account whether payment of the charge would cause financial hardship to the applicant or the person on whose behalf the application was made, and whether giving access to the document would be in the public interest
 - e. the amount of any deposit payable by the applicant (see s 12(1) of the Charges Regulations)
 - f. the applicant's obligation to notify in writing within 30 days that they:
 - i. agree to pay the charge
 - ii. dispute the charge, including seeking waiver or reduction, or
 - iii. withdraw the FOI request
 - g. that the FOI request will be taken to have been withdrawn if the applicant fails to respond within 30 days.

Reduction or waiver of charges

23. If an applicant contends that a charge should be reduced or waived, Comcare must consider:
 - a. whether 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 giving access to the document in question is in the general public interest or in the interest of a substantial section of the public (see section 29(5) of the FOI Act).

Deposits

24. Comcare may require the applicant to pay a deposit (section 29(1)(e) of the FOI Act, section 12(1) of the Charges Regulations). The deposit cannot be higher than \$20 if the notified charge is between \$25 and \$100, or 25 percent of a notified charge that exceeds \$100 (section 12(2) of the Charges Regulations). However, please keep in mind that where the cost of calculating and collecting a charge might exceed the cost to Comcare to process the request, it may generally be more appropriate not to impose a charge.
25. A deposit paid must be refunded to the applicant if Comcare fails to make a decision on the applicant's FOI request within the statutory time limit or sets a final charge after making a decision on the FOI request, that is lower than the amount already paid as a deposit (s 10(5)(a) of the Charges Regulations).

Collecting the remainder of a charge

26. If an applicant is liable to pay a charge, the charge must be paid before access to documents can be given (section 11A(1)(b) of the FOI Act and section 11(1) of the Charges Regulations).
27. The FOI Act does not set a time limit for an applicant to pay the remaining balance of a charge after a decision is made on the FOI request. If the applicant does not pay the charge, the requested documents cannot be released and there is no mechanism in the FOI Act to finalise the request.
28. Comcare should advise the applicant that if they do not receive the remaining balance within 60 days, the FOI request will be taken to have been withdrawn.

Correction of final charge

29. After making a decision on an FOI request where a charge was estimated under section 9 of the Charges Regulations, Comcare is required to calculate the final charge based on the actual time taken to process the request. Comcare recommends using the Charges Calculator here as well.
30. The new charge may be different to the estimated charge. If the new charge is less than the amount already paid by an applicant, a refund of the difference must be made (section 10(5)(a) the Charges Regulations). If the new charge is higher than the amount already paid, that payment will be treated as a deposit on account of the charge (s 10(5)(b)).