



Australian Government

Department of the Prime Minister and Cabinet

FOI GUIDELINES

FEES AND CHARGES

FOI Guidelines - fees and charges

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Purpose

The purpose of these Guidelines is to explain the application of fees and charges under the *Freedom of Information Act 1982* (the FOI Act) and under the Freedom of Information (Fees and Charges) Regulations (the Regulations).

Overview of fees and charges

Application fees

- Fees are imposed by the FOI Act and the Regulations, subject to remission in certain cases
- Except in limited circumstances, application fees do not apply to an applicant's own income support documents
- There is no application fee or charge for requests for an amendment or annotation of records containing personal information, but there is a \$40 internal review fee
- Application fees can be remitted where relevant grounds are established. These include financial hardship or remission on public interest grounds or for any other reason (section 30A)
- Decisions to remit the initial application fee, charges and the review fee are, strictly speaking, entirely separate and independent discretions. The fact that an application fee has been remitted does *not* prevent a decision-maker from declining to remit the review fee. Nor does remitting the application fee prevent the decision-maker from imposing charges. However, where an application fee is remitted on particular grounds, those grounds would normally also support the remission of charges. So, unless the applicant's circumstances have changed significantly, a review of charges should also be remitted in the interests of consistency. Remember that each application has to be considered on its merits
- The statutory timeframe for notifying a decision on access is not extended where an applicant pays the application fee at the same time as seeking remission of the fee
- Decisions in relation to fees should only be made by authorised officers

Processing charges

- There is a discretion to impose processing charges in addition to the application fee
- The charges are fixed by the Regulations
- Charges may be remitted where relevant grounds are established (subsections 29(4) and (5))
- Charges for provision of access depend on form of access given
- Imposition of charges (which may be charges already incurred) or charges on the basis of estimated time and resources

- There are limits for search and retrieval and decision-making charges in the case of access to personal information about the applicant (but these caps do not apply in certain circumstances)
- Notification to applicant of an estimate of charges is required and applicant must be given an opportunity to contest the amount or seek reduction or remission of charges on relevant grounds
- Application may be withdrawn after notification, or is deemed to be withdrawn if there is no reply to notification
- Charges estimate should be adjusted in some circumstances
- Payment of charges must be made before access is given
- A deposit may be required before further processing of request
- There is a power to require defaulters to pay initial payment in full
- Decisions in relation to fees should be made only by authorised officers

Government policy

- Government policy is that applicable fees and charges are to be collected unless grounds are established for a remission of fees or a reduction or remission of charges
- Any discretion conferred in the Act is to be exercised to facilitate access at the lowest possible cost. Fees and charges are not to be used to inhibit applicants from making applications for access to documents (subsection 3(2))

General

- No GST is payable on fees and charges
- The Regulations do not apply to section 9 documents
- Applicants should not be penalised for the record-keeping deficiencies of agencies
- Material may be made available outside the FOI Act at no charge

Review of decisions to impose fees or charges

All charging decisions and remission decisions are subject to internal and AAT review.

General

If applicable, fees should be collected, and processing and access charges imposed, by agencies for any FOI request. The exceptions to this general rule are:

- where the imposition of fees or charges would cause financial hardship;
- where the giving of access is in the general public interest; or
- any other relevant reasons.

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

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

Agencies should develop their own policies, consistent with the Government's general policy, on when fees and charges will be imposed. This is particularly important when there are large numbers of requests or when decision-making in agencies is decentralised. The policy should cover such issues as: when are application fees or charges imposed, what supporting evidence does an agency require in order to justify remission on financial hardship grounds, and what is the threshold figure for remission.

Grounds for remission of fees or charges or partial remission of fees

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

Financial hardship

Financial hardship will depend on the applicant's financial circumstances and the amount of the application fee or estimated charges to process the request. The AAT 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 attached. Agencies 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 each agency 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

Remission of application fees (section 30A), and 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.

An agency making the decision to remit a fee, or to reduce or remit charges on public interest grounds, 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.

If an agency concludes that giving access would be in the public interest, it should grant a full remission of fees or 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.

Circumstances in which the remission of an application fee on public interest grounds may be justified

The following classes of applicants are not an exhaustive or exclusive list of those who might make an application for remission of fees, or for a reduction or remission of charges, for public interest reasons. However, they serve to illustrate the circumstances in which fees and charges might be remitted.

- An applicant undertaking research that will complement the work of an agency and which will be available to the agency (even though the work may not be widely disseminated).
- A research worker whose work will be published widely or, in the case of a postgraduate student, where the final thesis or work will be available to the academic community.
- Not-for-profit bodies operating in social welfare, environmental protection, civil liberties, law reform and the like, where the applicant can establish that access is in the general public interest, or in the interest of a substantial section of the public. Agencies need to take care with not-for-profit organisations, just the fact that such a group is claiming to act in the public interest is not conclusive. It would be reasonable for a decision-maker to expect such a group to establish that its request is made for purposes other than the direct financial gain of its members and their spouses.
- A Member of Parliament making a request for the purpose of assisting a constituent when the *constituent* would not have been required to pay the fees and charges. This ground for remission of fees, or reduction or remission of charges, however, is not satisfied where the giving of access would primarily be of benefit only to the person making the request.
- A Member of Parliament needing information which is of a kind customarily provided in an answer to a Parliamentary Question and the work involved in processing the request does not exceed what is normally accepted for answering Parliamentary Questions.
- A Member of Parliament requesting information contained in a document which would normally be provided to the Member of Parliament in accordance with the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*.

Circumstances where there is no automatic right to remission of fees

There is no automatic remission of fees or 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 remission of fees, or 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 remission of fees, or reduction or remission of charges, an agency might consider:

- referring the request to the Minister responsible for the agency 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 agency); or
- deciding the matter in accordance with any guidelines issued by the Minister responsible for the agency 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 remission of fees or 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 fees and 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 agency has a policy to not charge staff for FOI requests.
- The number of documents to be released is small. (Agencies should have a written policy as to what constitutes a small number of documents.)
- 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 agency delays in processing applications.
- The agency was able to retrieve the documents easily and at marginal cost.
- The agency 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 agency.
- The volume and complexity of the documents is to be considered.
- The decision to charge is likely to be overturned on review by the AAT.
- 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.

Where the request is the applicant’s first request for access to his or her file, agencies should consider whether, having regard to the size of the file relating to the applicant, fees and/or charges should be remitted or reduced.

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

Onus on the applicant to state supporting reasons

Normally, an applicant seeking remission or reduction of fees and/or charges should state the grounds on which the application is based. However, the Minister's, or the agency's, consideration is not confined to the nominated grounds. Where an applicant requests the remission of an application fee, an agency or Minister must consider the two reasons set out in section 30A and any other relevant reason that comes to the agency's attention (whether or not the applicant specifically raises any of those reasons). An agency has the discretion to remit the fee 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 his or her reasons for contending that a charge should be reduced or remitted. However, if an agency becomes aware of another relevant factor, whether or not it has been raised by the applicant, it should be taken into account.

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

An agency retains the discretion to reduce or remit charges, or to remit a fee, 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, the remission of a fee should be granted, or 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 remit a fee in full or in part or 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 remission of a fee or 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 remission of a fee or reduction or remission of a charge, those reasons may be relevant matters that may properly be taken into account.

Partial remission or reduction

Fees and charges may be remitted in whole *or* in part. The discretion to remit fees 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.

Application fees

Overview

There are two types of application fee:

1. a fee for a subsection 15(1) application for access to documents (see subsection 15(2) and subregulation 5(a) of the Regulations)
2. a fee for a subsection 54(1) application for internal review (subregulation 5(b))

Some characteristics of fees:

- Except in limited, specified circumstances, the application fees do not apply where applicants seek access to their own income support documents.
- There is no application fee for a section 48 request to amend or annotate records of personal information.
- The internal review fee applies to all subsection 54(1) applications (including one requesting review of a decision refusing to amend a personal record).
- The FOI Act and Regulations provide that an application fee is payable except where the exemption, in relation to an applicant's own personal income support documents, applies.
- Where an application fee is payable and does not accompany the application, the application does not constitute a valid request for the purpose of the Act: the time period for making decisions on requests does not begin to run until the fee is either paid or remitted, and there is no obligation on the agency to process the application until payment or remission of the fee. However, under subsection 15(2), it is the duty of an agency to take reasonable steps to assist a person to make a valid request, in this case by the applicant paying the fee or successfully seeking remission.
- Application fees may be remitted by the agency.
- Application fees are imposed by the Act and must either be paid or remitted. They cannot simply be ignored.

Assisting the applicant to make a valid request

Until such time as an application fee required by the FOI Act has been paid, or remitted, an agency does not need to take any action to process the request.

Table 1: Application fees

<p>Fee accompanying request for access.</p> <ul style="list-style-type: none"> • No fee for amendment or annotation requests • No fee for income support documents (except where access has been given in the previous 3 months and the contents have not been modified) 	\$30
<p>Fee accompanying application for internal review, including review of refusal to amend or annotate a document.</p> <ul style="list-style-type: none"> • No charges are to be levied in respect of decision-making time expended in processing an application for internal review. The flat \$40 application fee applies. • However, access charges such as copying, inspection, etc apply in respect of any further access given as a result of internal review. 	\$40

Agencies are, however, obliged to assist applicants to make a valid request (subsection 15(3)). Accordingly, where the fee does not accompany the application, applicants should be notified of the application fee requirements and advised of the grounds for seeking remission. Applicants should also be told that no work will be undertaken on the request until one of the payment preconditions has been satisfied. This action should reduce the likelihood of unwarranted appeals to the Administrative Appeals Tribunal (AAT) on the basis of deemed refusal of access (section 56).

Payment of the fee to enable work on the request to commence does not preclude a later remission of the fee, where the relevant grounds are made out.

An applicant may attach the relevant application fee and at the same time apply for remission of the fee. In this case, providing all the requirements for a request are met under subsection 15(2), the application is valid once the fee has been paid, which means that ‘the FOI clock’ begins to run. The statutory timeframe for notifying a decision on access is not extended in this case (see further information below in Remission of application fees — section 30A).

Income support documents

There is an important distinction between applications by applicants for their own personal information and an application for documents supporting applications for income support.

Where an applicant seeks access to personal information documents which are not required for income support purposes application *fees can be applied*.

Where an applicant seeks access to income support documents *no fees or charges are applicable*, unless:

1. the applicant has had access to the documents within the preceding 3 months; and
2. the contents have not been modified since the applicant last had access (subregulation 6(2)(b)).

What are income support documents?

Income support documents are documents containing information about a claim for, or a decision in relation to, the payment to the applicant of a ‘prescribed benefit’.

A ‘*prescribed benefit document*’ is one which contains information relating to a claim for, or a decision in relation to, the payment to the FOI applicant of:

- a pension, allowance or benefit payable under the *Seamen’s War Pensions and Allowances Act 1940*, the *Social Security Act 1991*, the *Student Assistance Act 1973*, or the *Veterans’ Entitlement Act 1986*; or
- ‘any payment of a like nature, the purpose of which is to provide income support to persons of inadequate means’.

There is no court or tribunal decision on what constitutes a ‘payment of a like nature’ although it is clear that a payment must have as its purpose the provision of income support. The second part of the test, that support must be for persons of inadequate means, is based on an assessment of financial circumstances taking into account earnings, living expenses, assets and debts.

To be a ‘prescribed benefit document’, a document:

- must contain information relating to a claim for (or decision relating to) a prescribed benefit; and
- must have a direct connection with the FOI request and the benefit being claimed before the exemption applies.

Whether the exemption applies in any particular case will depend on all of the circumstances.

Where an agency decides that the fee is payable because it considers the documents sought do not constitute income support documents, or because of recent access to the documents, there is no internal or AAT review of the decision to require payment of the application fee. However, an applicant may seek review by the Ombudsman (section 57), or by the Courts under the *Administrative Decisions (Judicial Review) Act 1977*.

Remission of application fees — section 30A

An agency or a Minister may remit an application fee, in whole or in part, for any relevant reason, including:

- payment of the application fee would impose financial hardship on the applicant;
- making the documents available would be in the public interest or in the interest of a substantial section of the public; or
- any other reason the decision-maker considers applicable in the circumstances.

In some cases, the fact that the applicant has requested access to documents containing personal information about him or her will be relevant, but this consideration is not conclusive.

A decision not to remit an application fee, or to remit only in part, is subject to internal review and then an AAT review.

Although not a matter dealt with in the legislation, it is suggested, because of the practical difficulties and potential lack of consistency, that where internal review is sought only in regard to a decision not to remit the \$30 application fee, agencies should remit the \$40 internal review fee.

Where an applicant makes a request for the application fee to be remitted and does not pay the fee, the requirements for an application under subsection 15(2) are not met and the statutory timeframe for notifying a decision does not commence until a decision on the request for remission is made. The agency or Minister is required to take all reasonable steps to notify the applicant of the decision as soon as practicable but in any case no later than 30 days (subsection 30A(1A)). If the time limit is *exceeded*, the agency or Minister is taken to have made a decision that no part of the application fee is to be remitted (subsection 30A(1B)) and the applicant may seek an internal review. An applicant may also complain to the Ombudsman about delays in making the decision.

The statutory timeframe for notifying a decision on an access request is not extended where an applicant pays the application fee at the same time as seeking remission of the fee. The FOI request is valid as soon as the fee is received (assuming the other requirements for a valid FOI request in subsection 15(2) of the FOI Act are satisfied). The 'FOI clock' begins to run and a decision on the FOI request must be notified within the statutory timeframe (30 days unless there is statutory consultation). This point is emphasised in the Commonwealth Ombudsman's report *Department of Finance and Deregulation: Processing of an FOI Application* (Report No. 20/2009).

Provided proper weight is given to all relevant reasons for remission, agencies are free to develop their own guidelines on remission of application fees. For example, it would be open to agencies to adopt a policy of remitting an internal review application fee where the outcome of the review is wholly in favour of the applicant.

The fees are imposed under the Act and must, therefore, either be collected or remitted. There is no 'do nothing' option. Where a fee is remitted, it must be remitted by an officer who is authorised to do so under section 30A.

Charges

Overview

- There is a discretion to impose charges
- Charges may be remitted in full or in part
- Charges are set out in the Regulations
- In certain circumstances, there is a cap on processing charges for requests for personal information
- Applicants must be notified of the charges to be applied and the basis of those charges and given an opportunity to challenge a decision

Table 2: Charges

Search and retrieval time capped in respect of certain applications for personal information to \$30.00	\$15.00 per hour
Decision-making time capped in respect of certain applications for personal information to \$40.00	\$20 per hour
Extraction and production of written documents from computers or other like equipment	Actual cost incurred
Reproduction of computer information	Actual cost incurred onto magnetic data
Transcripts of sound recordings, shorthand, etc –	\$4.40 per page
Photocopies of written documents	\$0.10 per page
Copies, other than photocopies, of written documents	\$4.40 per page
Replaying or copying films, tapes, etc.	Actual cost incurred in replaying, etc no more than actual cost in copying
Inspection	\$6.25 per half hour (or part thereof)
Despatch to an address other than an Information Access Office	Cost of postage and delivery

Other charges

Table 3: 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

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

Applicants must be informed of the grounds on which an agency may decide to remit charges or to impose charges that are less than those that were originally estimated. The Act provides that an agency 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 an agency 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 agency or Minister under subparagraph 29(1)(f)(ii) that he or she contests the estimate or seeks reduction or remission of the estimated charges.

Preliminary assessments of charges

Where an agency decides that the applicant is liable to pay a charge in respect of the processing of a request, the agency must send a notice (if possible at the time it sends the acknowledgment of request and receipt for the application fee) containing the following information.

- The applicant is liable to pay a charge.
- The agency'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).
- The applicant may agree to pay the charge as assessed.
- Alternatively, the applicant has a right to argue that the agency has wrongly assessed the charge, or should exercise its discretion to reduce or to remit the charge. The applicant must state his or her reasons for arguing these points.
- The applicant may withdraw the request.
- In exercising its discretion whether to reduce or to remit a charge, the agency 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 amount of the deposit the applicant is liable to pay if the charge is imposed before the request is processed.
- The applicant has 30 days to advise the agency of her or his response and that the request will be taken to have been withdrawn if no response is received within that time.

Once the agency has heard from the applicant (within a period of 30 days or longer if allowed) it may do one of the following things:

- decide to impose charges in the amount originally estimated;
- decide to impose charges in a lesser amount, that is, to reduce the estimated charges; or
- decide not to impose any charges at all.

If the applicant does not receive notice of a decision within 30 days of his or her response to the estimate of charges, subsection 29(7) deems the agency or the Minister to have decided to impose the full charges as set out in the preliminary estimate.

The consequences of the deemed refusal to reduce or remit the charges are that the applicant:

- must then pay the charge in order to reactivate the 30 day period for dealing with the request (subsection 15(5) and paragraph 31(3)(a)); or
- may seek internal review of the deemed refusal (paragraph 54(1)(d)) and then subsequent AAT review (paragraph 55(1)(d)).

There are corresponding provisions for application fees: see subsections 30A(1A) and (1B).

Stopping the clock

When an applicant receives the written 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 withdrawn and the applicant is not liable for any charge. However, the application fee is not refundable.

If the applicant asks the agency to exercise its discretion to reduce or to remit the charge, the agency has 30 days to notify the applicant of its decision. An applicant may withdraw the request if the agency decides that there are insufficient grounds to justify a decision to reduce or to remit a charge.

If the agency decides to impose the charge, the agency must notify the applicant of that decision and seek payment of a deposit. The clock starts again on the 30 day time

limit for processing the request on the day that the applicant pays the deposit. The applicant has a right to seek internal review or AAT review of the decision to impose the charge.

Once the agency 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 agency refuses access to any of the documents, the charge can be less, but not more than, the agency's preliminary assessment (see subregulation 10(2)). The agency 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

Limit of personal information charges

There is a limit (or ceiling) on charges for personal information documents (regulation 4 and items 2A and 6 in the Schedule). The maximum limits on the charges that may be imposed in respect of requests for access to documents containing personal information about the applicant are as follows:

- a maximum of two hours search and retrieval time is chargeable in respect of each request (as at the date of issue of this Guide the limit is $2 \times \$15 = \30); and
- a maximum of two hours decision-making time is chargeable in respect of each request (as at the date of issue the limit is $2 \times \$20 = \40).

The maximum limits on charges for documents containing personal information about the applicant do not apply in respect of requests made by, or on behalf of, applicants who are not Australian citizens; or applicants whose continued presence in Australia is subject to any limitation as to time imposed by law (subregulation 3(3)).

The existence of a maximum charge in relation to requests for personal information is not in itself an indicator that a charge should, or should not, be imposed. The fact that the request is for personal information relating to the applicant may be a relevant factor to be taken into account by an agency when deciding whether to reduce or to remit a charge that would otherwise apply. Where an applicant may be charged for supervision or photocopying, agencies should consider whether, having regard to the size of the file relating to the applicant, fees should be remitted or charges remitted or reduced — particularly where the request is the applicant's first request for access to his or her file.

All charges, other than search and retrieval and decision-making charges, are chargeable without limit for applicants for personal information about themselves, subject to any decision to reduce or to remit charges, after consideration of relevant reasons.

Charges for work already done and estimated charges

When an agency makes a decision to impose a specific charge, the charge will usually be made up of:

- a charge for work already done (usually search and retrieval — subregulation 3(2)); and/or
- an estimate of a charge for work still to be done (regulation 9).

The charge for work which has already been done is payable in the amount, or at the rate fixed by or in accordance with the applicable Schedule in the Regulations.

Estimates of charges are based on time and processes likely to be involved in dealing with a request. Subject to adjustment of liability under regulation 10, an applicant is required to pay the estimates fixed under regulation 9 (subregulation 9(4)). 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 consultation) (subregulation 9(1));
- *in respect of the provision of access*, that is, charges (such as for photocopying documents, making arrangements for viewing a film, etc) estimated to apply if access were to be provided, other than a charge for the provision of personal inspection (subregulation 9(2)); or
- *in respect of the provision of personal inspection*, that is, the charge for the time it is estimated will be required to supervise the applicant in inspection of the documents (including hearing or viewing a sound recording, film or videotape) (subregulation 9(3) and (5)).

Neither the Act nor the Regulations require absolute precision in estimating charges. In estimating the time for search and retrieval of documents, an agency is entitled to rely on the estimated average time spent by officers in locating similar files in response to other FOI requests. If a file is easily located within an agency but needs to be searched for documents relevant to the request, an agency is entitled to rely on the estimated average time spent by officers in reading similarly-sized files for the purpose of other FOI requests. Similarly, average times for decision-making or for inspection of documents by applicants may be relied on in making estimates of inspection time. Applicants should not, however, be penalised for poor record keeping practices of agencies.

Where two or more applicants make the same request for documents at around the same time period, and charges are to be imposed, only one applicant can be charged for search and retrieval costs and formal consultation costs under sections 26, 26A and 27. The charges would be applied to the first application received.

Calculating search or retrieval time

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

- in searching a file index to establish the location of a document (whether that is done manually or by computer);
- in physically locating and extracting the document from the shelf or other place where it is held;
- in reading a file to locate a document relevant to a request; and
- consulting with individual officers to determine if documents exist, for example, on personal computers.

Generally, the time to be taken into account is the time actually spent by an officer on those tasks (subregulation 2(2)(a)). For example, where it takes 10 minutes to search a filing system to ascertain that the document ought to be with Smith in Branch A and another three hours to trace the document to Jones in Branch B, the three hours is not to be included in the calculation of the time spent in searching for, or retrieving, the document.

Where the filing system in the agency or Minister’s office ought reasonably to have indicated, but does not indicate, the location of a document, any time spent (other than the time which would have been spent had the filing system indicated the correct location of the document) in tracing the document to its location should be ignored in calculating the time spent in searching for, or retrieving, the document (subregulation 2(2)(b)).

The term ‘*filing system*’ means any authorised system of storing and recording the location of documents — it is not limited to the central registry or sub-registries.

Rate for search and retrieval

The application of the hourly rate for time spent searching and retrieving documents is set out as follows:

- the \$15.00 hourly rate for search and retrieval time is to be applied pro rata;
- the \$15.00 hourly rate applies irrespective of the classification or designation of the officer who searches for, or retrieves, the document (paragraph 94(2)(b) of the Act); and
- where the documents contain personal information about the applicant, there is a maximum charge for 2 hours of search and retrieval time, currently \$30.

Decision-making time

The charge for time spent in the processing of an FOI access request (but not of an internal review request) by an agency in deciding whether or not to grant, refuse or defer access to a document, or to grant access to a copy of a document with deletions, applies as a flat rate irrespective of the classification or designation of the officer who undertakes the work involved (paragraph 94(2)(b)).

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

- examining the document;
- consulting with any person or body;
- making a copy with deletions in accordance with section 22;
- notifying an interim or final decision on the request, including preparation of a schedule of documents; and
- any other time which may be counted, including time spent by FOI staff in preparing a recommendation for a decision-maker.

Decision-making time does *not* include the time of persons who are consulted by a decision-maker in the course of making her or his decision. Photocopying charges may be imposed, but that cost must not then be included in the general photocopying charge.

Where the documents contain personal information about the applicant, there is a maximum charge for two hours of decision-making time, currently \$40.

Agencies should take care that charges in this category are not inflated because of the slowness of particular officers in making decisions, for example, where the officer is not familiar with the FOI process or with the documents themselves. Whether estimating charges in advance, or determining actual charges, the cost should be based on that of a reasonably competent officer with appropriate knowledge.

Actual cost

Cost of computers, arrangements to hear or view material, and copies of recordings etc

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 hear a recording, or view a film or videotape; and
- producing a copy of a recording, film or videotape, or of a computer tape or computer disk.

Agencies may be required to justify before the AAT 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 producing the service. For example, where it is appropriate to fix a charge for producing a document by computer, the actual cost where the agency *uses its own* computer facilities 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 agency uses *outside computer facilities*, the amount charged by the agency for production should be based on actual costs. For example, the time spent by officers when making arrangements for an applicant to hear a recording or view a film or videotape (or making copies of a recording, film CD-ROMs or videotape) would be charged. That amount should be calculated on an hourly rate (pro rata), based on the salary of the officer performing the task, plus any additional cost for overheads. Agencies should be prepared to justify the cost before the AAT 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 computer facility) it is imperative that the applicant be informed of this cost when being notified of the estimated charges under subsection 29(1).

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 — agencies must 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. Agencies are obliged to help applicants focus their request on the documents they really want.

Consulting at an early stage in the evaluation process has the benefit of providing the applicant with an opportunity to reconsider the scope of his or her request. The applicant may then choose to proceed or, alternatively, refine or withdraw the request. Consultation will also allow agencies to plan their resources for the purpose of processing the application.

Cost of postage or delivery

Where:

- access is to be given to a copy of a document; and
- it is, at the request of the applicant, to be posted or delivered to him or her at a place other than an Information Access Office;

the charge is not to exceed the actual cost of postage or delivery.

The cost of postage or delivery includes incidental costs, for example the cost of suitable packing to protect a DVD or a videotape.

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.

Agencies have 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) (regulation 12). An agency may suspend work in regard to the access decision, pending receipt of the deposit.

Agencies should make full use of the deposit provisions. Where estimated charges exceed \$25, agencies should generally seek payment of a deposit and notify the applicant:

- of the amount of the deposit and the estimated total charges (regulation 13 and subsection 29(1));
- that a deposit, if paid, will not be refunded (regulation 14); and
- 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. However, this requirement does not apply to personal inspection of documents or the viewing or hearing of audio tapes, films or videotapes, etc, unless an estimate has been fixed in accordance with regulations 9(3) and 11(2).

An applicant may:

- decide to pay the deposit where there is no overall objection to the estimated charge;
- if requesting a reduction or remission of a charge, decide not to pay the deposit until the outcome of that request; or
- speed up processing of the request by paying the deposit (or the full estimated charge) while awaiting the decision on reduction or remission of the estimated charge. This has the result of restarting the clock for the time limit on processing the access request (paragraph 31(3)(a)). If it is decided to reduce or to remit the charge, the deposit should accordingly be reduced or not sought.

Payment in advance by defaulters

Where an applicant has previously made a request for access to documents to the same agency but failed to pay the charge as notified, he or she may be treated as a defaulter. An agency has the power to require an applicant to pay a charge, based on an estimate of the work involved, before any work needed to give effect to her or his request is undertaken (regulation 9).

In these circumstances, the agency must:

- make a request for full payment of estimated charges (rather than just a deposit);

- at the very minimum, do the amount of work required to give the applicant a notice of charges payable (section 29); and
- give written notice of the intention to require payment in full, even though the agency can only impose charges and require payment in full after consideration of the applicant's reply.

In making a decision to request advance payment, certain factors need to be considered, including:

- previous failure to pay charges;
- the amount of previous unpaid charges;
- the amount of the current calculated charges and the applicant's interest in access to the documents currently sought;
- the existence of the legislative provision for deposits; and
- any reasons given for the failure to pay the earlier charge, and the public interest in access being given to information in the possession of the government (subsection 3(1)).

In summary, then, an agency cannot require payment of any previous unpaid charges before processing a current FOI application. Only payment of the current charges, based on work already done and/or on estimates of work to be done, may be made a precondition to such further processing.

Adjustment of imposed charges — regulation 10

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.
- An applicant's liability may be increased if the charge of processing a request exceeds the agency's estimate, but only if:
 - the applicant will be granted full access to all documents without deletions; and
 - access is in the form requested (such as by inspection or copies).
- An agency should consult with the applicant as soon as possible after it becomes clear that the applicant's liability is likely to substantially increase.
- Appropriate 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 regulation 9 and section 29 is likely to be substantially increased under regulation 10.
- If an agency has substantially underestimated a charge fixed under regulation 9 and section 29, it should consider not imposing the whole or part of any additional charge fixed under regulation 10.

Payment before access is given to documents — paragraph 18(1)(b) and subregulation 11(2)

Where the applicant is liable to pay a charge in relation to accessing a document, the agency:

- must collect 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).

Provision of access at Information Access Offices — subsection 28(4)

A person who is given access at an Information Access Office shall not be required to pay any costs incurred by the agency that would not have been incurred had access been given at another place more convenient to the agency or the Minister giving access. For example, where the applicant is given access at an Information Access Office in a State capital city rather than at an agency's central office in Canberra and the agency consequently incurs a cost to deliver the documents. In this case, the agency cannot recover those costs from the applicant.

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 viewing a film or videotape or hearing a sound 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, he or she is entitled to receive it in that form unless access in that manner:

- would interfere unreasonably with the operations of an agency 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 an agency for its everyday operations. In both cases the agency may refuse to make the actual documents available for inspection and, instead, provide copies.
- Where an applicant seeks access to a typed transcript of a lengthy tape recording, which would have to be produced, an agency may give access to the tape itself.
- Where an applicant wishes to make a copy of a videotape on his or her own videotape recorder which may damage the original videotape in the process, or where, due to the fragility of the document, or for other such reasons, personal inspection may result in damage to the document. In such cases the agency may make a copy of the tape and provide that instead.
- Where a document that will not photocopy, due to its age or its condition, or where an infringement of copyright would be involved (other than that owned by the Commonwealth, an agency or a State) in respect of a matter not relating to the affairs of an agency.

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

- where an applicant specifies a particular form of access, he or she 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, he or she 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 AAT.

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

Agencies always have 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 an agency 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 — sections 8, 9 and 12

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 each agency of categories of documents maintained in the possession of the agency, 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).
- Section 12 documents — that is, documents that are:
 - in the open access period within the meaning of the *Archives Act 1983*;
 - available as part of a public register, or otherwise in accordance with a law other than the FOI Act — for example, the Register of Patents and Patent specifications under the *Patents Act 1990*; or
 - documents that are made available for purchase by the public in accordance with arrangements made by an agency.

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

Where photocopies of documents are made available, and no other pricing policy applies, it may be appropriate to charge at the rate provided in the Regulations for photocopies (that is, 10 cents a page).

Charges where the agency agrees to produce a new document

Where an agency agrees *as a matter of discretion* to produce a new document containing the information sought (where no such document exists), the agency may set a reasonable fee to be paid for the work involved in producing that document.

The authority to collect a charge in this instance, and most other instances outside Part III of the FOI Act, comes not from the FOI legislation but from the power of agencies to impose reasonable fees for the sale of Commonwealth property. However, statutory agencies should take care in relying on this power. While Departments of State have that power, statutory authorities only have such powers to impose fees and charges as are conferred by their relevant governing statutes.

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.

The procedures do not apply until an agency has received a valid FOI request, that is when it receives an application accompanied by the application fee (currently \$30) or the application fee has been remitted. Where the request is accompanied by the application fee, and a request for remission is also made, the agency has to make a decision about whether the application fee will be waived or remitted. As the fee has been paid, the application is valid and the FOI clock is ticking. The later the notification for fees or charges, the less is the likelihood that the agency will be able to meet its agency obligations in relation to processing the request within 30, or, where mandatory consultation applies, 60 days.

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

<p>The agency receives a valid request (either the fee has been paid or remitted)</p>	<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>
<p>The agency determines whether the applicant is liable to pay a fee or charge</p>	<p>Considerations:</p> <ul style="list-style-type: none"> • should fee or charges be remitted — is there sufficient grounds to remit • are documents ones for which no fee or charge is applicable, eg own income support documents • would requesting a fee or charge impose financial hardship on the applicant • are there public interest grounds to remit • are there any other reasons, eg delay by the agency in processing requests or request for own personal information • is it likely the applicant would be successful in any request to remit any charges — if so, don't calculate charges
<p>If a fee is to be charged</p>	<p>Notify applicant why fees will not be remitted or reduced and provide review rights If applicant pays the fee, determine whether charges should be applied</p>
<p>Notify the applicant of their liability under</p>	<p>Send the applicant a written notice, if possible at the time the acknowledgment</p>

<p>section 29 to pay 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 paragraph 15(5)(b) (or the period as extended under subsection 15(6)) for notification of a decision on the request (subsection 31(3))</p> <p>It is suggested that the notice be sent by certified mail so the agency 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>of the request is sent (within 14 days of the request) and a receipt for the application fee stating that:</p> <ul style="list-style-type: none"> • the applicant is liable to pay a charge (i.e. the total of the individual charges); • the agency’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 pages of photocopies are estimated to be involved, etc); • the applicant may agree to pay the charge as assessed, 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 agency allows), to advise the agency of his or her 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>
<p>The agency receives advice from the applicant contesting charges. The applicant has a right to argue that the agency has wrongly assessed the</p>	<p>The applicant should also now be informed of the right to seek remission of the application fee (unless such a request was made earlier).</p> <p>In exercising its discretion on whether to</p>

<p>charge (eg based on a mathematical mistake, a mistake as to the charge rate or the amount of work involved, etc)</p> <p>The agency must now consider whether it should exercise its discretion to reduce, or not to impose, the charge</p>	<p>impose a charge, the agency 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 agency should notify the applicant of the decision about charges as soon as possible, but no later than 30 days after receiving request for remission.</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. However, if the application fee has been paid it is not refundable unless it has been remitted.</p> <p>Send applicant a letter confirming agency understanding that application is deemed to have been withdrawn. Advise that if the applicant wants access to the same documents a new application will need to be made and a new application fee paid (unless extenuating circumstances exist).</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>Agency fails to make a decision about remission within 30 days</p>	<p>The agency is deemed to have imposed the charge it first estimated and the applicant may appeal directly to the AAT for review of the deemed decision. An applicant may ask that the request be treated as withdrawn if the agency</p>

	<p>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 agency as required, or the period of 30 days (or any further period allowed for notifying the agency) has elapsed (when the request is treated as withdrawn). Agency decides after receiving submission from applicant about remission that charges will be imposed</p>	<p>Agency 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 agency decides that a charge should be imposed, it must notify the applicant of the decision and seek payment of any deposit (see sample letter in Appendix 7). The applicant has a right to seek internal review (and subsequent AAT review) of the decision to impose a charge (paragraphs 54(1)(d) and 55(1)(d)).</p>
<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 remission 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 subsections 31(1) and (3)):</p> <ul style="list-style-type: none"> • the charge or relevant deposit is paid; or • reduction or remission of the charge is sought, whether initially or on internal review, and either: <ul style="list-style-type: none"> • a remission request is granted by the agency; • any reduced charge or appropriately reduced deposit is paid; • the AAT sets aside a

	<p>decision to impose a charge; or</p> <ul style="list-style-type: none"> the AAT substitutes a reduced charge and payment is made or the deposit is appropriately reduced.
<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 or remission 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 agency processes the request if necessary, the agency revises its assessment of the charge payable by the applicant based on the actual amount of work involved in the request; if the agency refuses access to any documents, the charge can be less but not more than the agency's preliminary assessment originally notified to the applicant (subregulation 10(2)) the agency 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 (subregulation 11(1)). There is an exception in the case of access by inspection (subregulation 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 subregulation 9(3) <p>The agency 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>

Where charges are likely to be very high, there may be other ways agencies can devise, in 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 of photocopying (at 10c per page), it might be suggested to the applicant that he or she spend half an hour inspecting the

documents (at \$6.25 a half hour) to see whether they really want copies of all the documents or whether they might be more selective. In many cases a suggestion of that kind would best be made at the time of the original section 29 notification — for example, where the bulk of the documents are easily located and known not to be sensitive — although it could also be used at a later time.

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 AAT (see paragraphs 55(1)(d) and (e) of the FOI Act). This includes an internal and AAT 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.

Recovery of unpaid charges

Where an applicant is notified that a charge has been imposed by a Minister, a Department or a prescribed authority in accordance with section 29 of the Act, the charge becomes a debt payable to the Commonwealth or the prescribed authority. The debt is not removed unless:

- the AAT sets aside the decision to impose the charge; or
- the charge is waived by the Commonwealth or the prescribed authority.

It is the responsibility of every agency to ensure that action is taken to recover amounts owed to the agency under the FOI Act and the Regulations. Departments and prescribed authorities which are subject to the *Audit Act 1901* should note that,

although delegates of the Minister of Finance in most agencies have the power under subsection 70C(1) of that Act to write off irrecoverable debts, and the power under paragraph 70C(2)(c) to allow debts to be paid by instalments, waiver of a debt due to the Commonwealth is a matter for the Department of Finance. **Note** that while the waiver of a debt extinguishes the Commonwealth's right to payment, a debt that has been written off may be reinstated if circumstances change so that the debt is no longer regarded as irrecoverable or uneconomic to pursue.

Appendices

Appendix 1 — Letter advising application fee payment — *Sample*

Dear <applicant>

I refer to your letter of <date> in which you sought access under the *Freedom of Information Act 1982* to documents relating to <subject of request>. The legislation requires requests for access to be accompanied by an application fee of \$30, except where the documents sought relate to claims concerning a prescribed income support benefit such as a pension, allowance or benefit payable to the applicant.

Your payment, together with the attached payment advice slip, should be addressed to:

Collector of Public Moneys

<Department>

<Address>

The Department has a discretion to consider remission of the fee for any reason, including where:

- the payment of the fee, or a part of the fee, would cause financial hardship to the applicant or person on whose behalf the application was made; or
- the giving of access is in the general public interest or in the interest of a substantial section of the public.

You should provide adequate supporting evidence to clearly demonstrate that either one of the relevant criteria has been met or that the overall circumstances justify remission. If you believe you have sufficient grounds for remission of the application fee you should address your request for remission to:

<Name>

<Address>

Please quote file number <file no> on any correspondence.

Until such time as the application fee is paid or remitted, your letter does not constitute a request for the purpose of the FOI Act and there is no obligation on the Department to process the application. Should payment of the application fee, or a

request for remission, not be received from you within 30 days from the date of this letter I will understand that you no longer wish to proceed with the matter.

Should you proceed with your request, additional charges may also be payable in relation to time spent in searching for, and retrieving, relevant documents, for decision-making time, photocopying, postage, etc. In the event the Department decides that you are liable to pay a charge in respect of the processing of the request, you will be notified of the preliminary assessment of the charge and have full opportunity to contend that the charge should not be imposed or should be reduced.

Yours sincerely

FOI Coordinator

Appendix 2 — Acknowledgment (when fee received) — *Sample*

Dear <applicant>

I refer to your letter of <date> in which you sought access to documents relating to <subject of request> under the *Freedom of Information Act 1982*.

Payment of the application fee was received on <date of receipt> and the statutory period for processing your request will commence from that date. The receipt for your payment is attached.

You will be notified of any additional charges in relation to your request, or of a decision, as soon as practicable.

Yours sincerely

FOI Coordinator

Appendix 3 — Notice of liability to pay a charge —*Sample*

Dear <applicant>

I refer to your request under the *Freedom of Information Act 1982* in which you sought access to <documents requested>. In accordance with section 29 of the Act I have decided that you are liable to pay a charge in respect of the processing of your request. My preliminary assessment of that charge is as follows:

Search and retrieval time x 1 hour @ \$15ph: \$15.00
Decision-making time x 3 hours @ \$20ph: \$60.00
Copies of documents x 45 @ 10 cents: \$4.50
Postage: \$3.00
TOTAL \$82.50

AGENCY NOTE: You should give full details of the basis on which the charge has been calculated, ie. that you have located 5 files which relate to the request with approximately 150 folios per file and that it will take 1 hour to search those files to identify documents which come within the terms of the request. You estimate that approximately 100 folios will require a decision on access and that will take 3 hours. Given the nature of the documents you envisage access being granted in respect of about 45 of those documents.

You may contend that the charge has been wrongly assessed, or should be reduced or not imposed. In deciding whether to reduce or not to impose a charge, the decision-maker must consider any relevant reasons, including either of the following reasons:

- whether payment of the charge, or part of it, would cause you financial hardship; and
- whether the giving of access to the documents is in the general public interest.

As the charge exceeds \$25, a deposit of \$20 [or if it exceeds \$100 a deposit of 25%] will be sought if the charge is imposed. Within 30 days of receipt of this notice you are required to either:

- agree to pay the charge; or
- contend that the charge [you should give full reasons for so contending]:
 - has been wrongly assessed; or
 - should be reduced; or
 - not imposed, or both; or
- withdraw your request.

If you fail to notify this Department within 30 days of receipt of this notice in a manner mentioned above it will be taken that you have withdrawn your request. In accordance with section 31, the 30 day limit for processing your request is suspended from the day that you receive this notice and resumes on either the day you pay the charge (in full or the required deposit) or the day on which this agency makes a decision not to impose a charge.

Yours sincerely

FOI Coordinator

Appendix 4 — Notice of imposition of a charge — *Sample*

Dear <applicant>

I refer to my notification that you were liable to pay a charge in respect of the processing of your Freedom of Information request and your subsequent request for reduction/remission of the preliminary assessment of the charge.

I have decided to impose the charge without reduction / impose a lesser charge (whichever is appropriate) because (agency should state full reasons for its decision). (Where the decision is not to impose a charge at all, it is only necessary to inform the applicant of that fact and that processing of the application is continuing.)

On payment of a deposit (25% of the total charge if over \$100, or \$20 if between \$25 and \$100) processing of your request will commence. You will be advised of my decision within (balance of 30 day time limit) after payment of the deposit.

My decision to impose the charge without reduction / impose a lesser charge (whichever is appropriate) is subject to review. Section 54 of the FOI Act gives you the right to apply for a review of the decision to impose a charge upon you. Application for internal review of the decision must be made in writing within 30 days of receipt of this letter and accompanied by an application fee of \$40. No particular form is required, but it is helpful if you set out in the application the grounds on which you consider the decision should be reviewed.

Yours sincerely

FOI Coordinator

- examining the document;
- consulting with any person or body;
- making a copy with deletions; and
- notifying the applicant of any interim or final decisions made on the document.

Appendix 6 — Charge pro forma — *Sample*

File Number:

1. APPLICANT:

2. AGENCY / ACTION AREA:

RECOMMENDED APPROVED

3. PRELIMINARY ASSESSMENT

- a. Search and retrieval time \$
 - b. Decision-making time \$
 - c. Inspection \$
 - d. Photocopying \$
 - e. Despatch \$
- 4. TOTAL ESTIMATED CHARGE \$**
- 5. DEPOSIT SOUGHT \$**

6. PAYMENT RECEIVED a. Receipt No: b. Date:

RECOMMENDED APPROVED

7. ACTUAL CHARGE

- a. Search and retrieval time HRS/MINS \$
 - b. Decision-making time HRS/MINS \$
 - c. Inspection HRS/MINS \$
 - d. Photocopying Copies \$
 - e. Computer usage CPU Seconds \$
 - f. Transcripts Pages \$
 - g. Replaying/Copying films/tapes \$
 - h. Other \$
 - i. Despatch \$
- 8. TOTAL CHARGE \$**
- 9. LESS DEPOSIT \$**
- 10. NET CHARGE \$**

RECOMMENDED APPROVED

Appendix 7 — Questionnaire to assist in determining whether applicants are in financial hardship

1. Applicant

My name is _____

My address is _____ P/Code _____

My occupation is _____

I ask that the application fee payable on my application be waived on the grounds that the payment, either in full or in part, would cause me financial hardship.

2. Employment

Are you currently employed?

YES [] (if 'yes' please complete this section)

NO [] (if 'no' go to part 3 'Other Income')

I am employed by _____

My employer's address is _____

My income after tax is \$_____ per fortnight.

3. Other Income

Do you receive any other income in addition to that shown above?

YES [] (if 'yes' please complete this section)

NO [] (if 'no' go to part 4 'Summary of Income')

The details of any income I receive, including maintenance payments for myself or my children, Family Allowance, rent or board from people living in the same premises as I do are as follows:

Nature of income

_____ \$ _____ per fortnight
_____ \$ _____ per fortnight
_____ \$ _____ per fortnight
_____ \$ _____ per fortnight

Total \$ _____ per fortnight

4. Summary of Income

The total amount of income I receive per fortnight is as follows:

Employment (from 2 above) \$ _____

Other income (from 3 above) \$ _____

TOTAL \$ _____

5. Expenses

I have _____ dependants (if dependants have a separate income please show the amount received fortnightly after tax)

I am committed to the following fortnightly expenses:

Rent / mortgage / board \$ _____ per fortnight

Credit card / HP / Loan repayments \$ _____ per fortnight

Living expenses — food, clothing, gas, electricity, fares, phone, etc
\$ _____ per fortnight

Other \$ _____ per fortnight

\$ _____ per fortnight

\$ _____ per fortnight

Total \$ _____ per fortnight

6. Savings

Do you have any savings?

YES [] (if 'yes' please complete this section)

NO [] (if 'no' go to part 7 'Other Assets')

The details of my bank accounts, credit union accounts, investment accounts etc are as follows (please indicate joint accounts by putting (J) next to the account number)

Account number	Name of institution	Current balance
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Note: Interest from these accounts should be included in 3 '**Other Income**'.

7. Other Assets

Do you have any other assets? Assets can be things like blocks of land, houses, cars, boats, shares etc

YES [] (if 'yes' please complete this section)

NO [] (if 'no' go to **8 'Other Information'**)

The assets I have are as follows (if ownership of any of your assets is shared with another person show what share you have, eg half share in)

Description of assets	Estimated net value
	\$
	\$
	\$
	\$
	\$

The 'estimated net value' is what you would expect to receive from the asset, or your share of the asset, after any secured liabilities, eg mortgages, hire purchase, have been paid off if it was sold in the current market.

Note: Income derived from these assets (eg rent, dividends) should be included at 3 '**Other Income**'.

8. Other Information

Is there any other information about you, or your dependants' circumstances, which you believe should be taken into account in deciding your request?

YES [] (if 'yes' please set out the information on a separate sheet and attach it)

NO [] (if 'no' go to **9 'Declaration'**)

9. Declaration

I declare to the best of my knowledge and belief the information set out in this application is true and that, where any estimate is given, it is given in good faith. I understand that if I knowingly make an untrue representation or statement to receive a benefit or advantage from the Commonwealth I am guilty of an offence and if found guilty I may be imprisoned for up to two years or fined.

Applicant's signature:

Date ____/____/____

10. FOR AGENCY USE ONLY

The application fee / charge to which this application relates is waived / not waived in accordance with the FOI Act.

Authorised Officer

Date ____/____/____