

FOI Fees and Charges

This information sheet outlines when a fee or charge can be required by an agency under the *Freedom of Information Act 1991* (FOI Act).

FOI Act Section 53

Section 53(2) of the FOI Act deals with fees and charges. It states, among other things, that fees and charges must reflect the reasonable administrative costs incurred by agencies in exercising their functions under the FOI Act.

Section 53(2aa) also provides that fees can only be calculated for the processing of FOI applications in relation to finding, sorting, compiling and copying documents and undertaking any consultation required by the FOI Act. An agency cannot charge for the cost of obtaining legal advice or for consultation that is not required by the Act (eg. liaising with staff within their own agency).

Fees and Charges Regulations

Section 53 of the FOI Act states that fees and charges payable must be fixed by regulation. As a result, the *Freedom of Information (Fees and Charges) Regulations* (Regulations) were first made in 1991 and remade in 2003.

The schedule of fees and charges included in the Regulations is reviewed every financial year in line with an agreed indexation factor.

You can access a copy of the Regulations, which includes a detailed schedule of fees and charges, from the Parliament SA website at www.legislation.sa.gov.au.

Fee Waiver, Reduction or Remission

According to section 53, the Regulations must provide for such waiver, reduction or remission of fees as may be necessary to ensure that financially disadvantaged people are not prevented from accessing documents under the Act.

In order to receive a waiver, reduction or remission, an applicant must satisfy the agency that:

- » he or she is a concession card holder, or
- » payment of the fee or charge would cause them financial hardship.

The agency must then waive or remit the fee or charge.

Section 53 also allows an agency to waive, reduce or remit a fee or charge in circumstances other than those provided for in the Regulations. For example, if a FOI applicant requests a fee to be reduced or waived but cannot satisfy the above criteria, the agency can still decide to reduce, waive or remit the fee or charge at its discretion.

Members of Parliament

Section 53 of the FOI Act entitles Members of Parliament (MPs) to access documents under FOI without charge unless the work generated by the application exceeds a threshold set by the Regulations. The threshold is currently set at \$1000.

This means that MPs are entitled to \$1000 worth of accumulated processing, copying and other activities before they can be charged any fees or charges.

The meaning of 'Member of Parliament' in the FOI Act only includes MPs of the Parliament of South Australia. It does not include Federal MPs or MPs of other State Parliaments. Therefore Federal and other state MPs cannot take advantage of the \$1000 fee free threshold.

Personal Affairs

Fees and charges payable for the purposes of the FOI Act are set out in Schedule 1 of the Regulations. In the case of applications for personal affairs, no fee can be charged for up to the first two hours spent by the agency in dealing with the application and giving access. For each subsequent 15 minutes spent by the agency in dealing with the application a processing fee may be charged. The amount of the processing fee is prescribed in the Regulation.

Processing charges cannot be levied against an application where the applicant has qualified for fee waiver or remission.

FOI Amendment Applications

Under section 30 of the FOI Act an agency cannot charge applicants any fees or charges, when an applicant lodges an amendment application. This includes an application for an internal review of an amendment application.

Review of Fees and Charges

Reviews of fees and charges are dealt with by section 53(3) of the FOI Act. Specifically, where an agency determines a fee or charge it must, at the request of the person required to pay, review that fee or charge. Where the agency thinks it is appropriate, the fee must be reduced.

A person seeking a review of a fee or charge under section 53(3) is not required to pay an application fee or any other charge in relation to the review.

Where the agency refuses to reduce the fee or charge and the applicant is dissatisfied, the applicant may apply to the Ombudsman for a further review of the fee or charge. The Ombudsman may then:

- » waive, confirm or vary the fee or charge, or
- » give directions as to the time for payment of the fee or charge.

Note: Reviews in relation to fees and charges can only be dealt with under section 53.

Internal Review Applications

An application for an internal review is subject to an application fee, unless the applicant is seeking an internal review to amend personal records.

While agencies can charge an applicant for production costs such as photocopying and providing a written transcript (clause 2(2) of schedule 1 of the Regulations) they cannot

charge for the time it takes to process an internal review application. This is because they have, in effect, already dealt with the application when the original determination was issued.

If an agency varies or overturns their original determination, including where an agency provides access to a document as a result of the internal review, the internal review application fee must be refunded.

Agencies should consider the appropriateness and impact of charging consultees an application fee for an internal review. In instances where consultees are aggrieved by a determination and seek to have that determination reviewed it may be appropriate for an agency to use its discretionary ability to waive, reduce or remit the fee

Advance Deposits

Section 17 of the FOI Act allows agencies to request payment of an advance deposit from the applicant where the agency is of the opinion that dealing with the application will exceed the application fee.

To request an advance deposit the agency must write to the applicant advising that an advance deposit is required and that the application has been suspended until payment is received. Where a deposit has been requested but not paid within a reasonable time, an agency may refuse to continue to deal with the application. This constitutes a determination under the FOI Act and allows an applicant to seek a review of this decision.

The period between making the request for an advance deposit and the payment of the deposit by the applicant is not to be taken into account in calculating the time an agency has to deal with the application. In other words, the 'clock stops ticking' until the applicant pays the advance deposit.

GST

All transactions and services under the Regulations have been determined as GST exempt by virtue of Section 81-5 of *A New Tax System (Goods and Services Tax) Act 1991* Determination 2000 (No.2).

FOIMS

Agencies must record all fees and charges relating to FOI applications in the Freedom of Information Management System (FOIMS).

Need further assistance?

Contact

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