Section 22

From: FOI
Sent: Wednesday, 10 December 2014 4:51 PM
To: Section 47F @atia.com.au
Subject: TRIM: FOI 1618 - Blair Davies (ATIA) - ER2014/05431 [SEC=UNCLASSIFIED]
Attachments: 1618 - signed charges letter.pdf

Good afternoon Mr Davies

Please find attached correspondence in relation to your FOI request.

Regards

FOI Team

Parliamentary and Legal Services Unit
Ministerial and Communications Division
The Treasury, Langton Crescent, Parkes ACT 2600

Phone: (02) 6263 2800
Email: foi@treasury.gov.au

Australian Government
The Treasury

10 December 2014

File: ER2014/05431
FOI Ref: 1618

Mr Blair Davies
Australian Taxi Industry Association
PO Box 1388
NORTH LAKES QLD 4509

Section 47F @atia.com.au

Dear Mr Davies

FREEDOM OF INFORMATION REQUEST: ESTIMATE OF CHARGES

I refer to your email of 17 November 2014 in which you sought access to documents under the *Freedom of Information Act 1982* (the Act). A copy of this request is attached.

On 28 November 2014 we advised our intention to refuse your request under section 24AA of the Act because the work involved in processing the request, in particular part 2, would substantially and unreasonably divert the resources of the agency from its other operations.

On 2 December 2014 you contacted Section 22 to discuss your request, and he offered the option of discussing the scope of your request with me with a view to narrowing its scope, which you declined. You subsequently emailed a revised request to FOI at Treasury. A copy of the revised request is attached.

A very large number of documents have been identified as possibly falling within the scope of Part 2 of your request. These documents would then need to be examined and decisions taken as to whether to grant, refuse or defer access. Consultation with third parties could be required as well as copying and redacting of the documents. Part 2 also covers documents that may be held in other divisions of Treasury which would require search and retrieval time across a further three divisions.

Accordingly, I am refusing Part 2 of your request under subparagraph 24AA(1)(a)(i) of the Act because the work involved in processing either the original or revised request would substantially and unreasonably divert the resources of the Treasury from its other operations. I note that you advised you would withdraw Part 2 of your request upon receiving this written notification.

Part 1 of your request is sufficiently narrow that I am able to process the request. The *Freedom of Information (Fees and Charges) Amendment Regulations 2010* (the Regulations) prescribe that charges can

be levied in respect of a request for access to documents. These charges are set out by the Regulations and are for search and retrieval of documents, decision making and provision.

I have decided that you are liable to pay a charge in respect of the processing of Part 1 of your request.

My preliminary assessment of the charge is $29.00 (see table for detail of charges).

Search and retrieval, tag relevant pages	$29.00
Decision-making (after deducting first five hours free) • examine relevant pages for decision making (includes exempted pages and pages released with deletions)(first five hours free) • preparing schedules and preparation and notification of decision	$00.00
TOTAL COST	**$29.00**

The charges set out above are determined in line with the Regulations to reflect fairly the work involved in processing a request, such as for search and retrieval of documents, decision making and provision of access and are not indicative of the level of access that may be granted to the documents sought.

The charge for search and retrieval is based on a search of the Treasury's electronic records systems and of files held by individuals in areas for which the subject matter contained in the request is potentially of relevance. A number of documents have been identified as potentially falling within the scope of your request. Most of these documents will require a decision on access and I estimate that will take around two hours. The first five hours of decision making time are free of charge. Therefore you will not be charged for decision making time.

The Regulations prescribe that where a charge is imposed and exceeds $25.00 but is less than $100.00, a deposit of $20.00 may be sought and where the charge exceeds $100.00, a deposit of up to 25 per cent of the estimated charges may be sought. Based on the preliminary estimate of charges for your request which is $29.00, I have decided you are required to pay a deposit of $20.00.

Within 30 days of receipt of this notice you are required to either:

- pay the charge; or
- pay a deposit with the remainder to be paid prior to receipt of documentation, or
- contend that the charge
  - has been wrongly assessed, or
  - should be reduced, or
  - not imposed, or both; or

  } You should give full reasons for so contending
- withdraw your request.

Options for payment are attached.

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 has discretion to consider reduction or remission of charges for any reason, including the following reasons:

- 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.

If you wish to contest the charges, you should give full reasons for doing so.

If you fail to notify the Treasury in a manner mentioned above within 30 days of receipt of this notice it will be taken that you have withdrawn your request.

The Treasury considers the names, email addresses and other contact details of public service officers to be irrelevant to an FOI request. These details will not be released pursuant to section 22 of the Act. We will provide you with the designations (for example, Analyst, Senior Adviser, Manager) of authors and addressees of documents in the schedule of documents accompanying the decision letter so that their relative seniority is known. You have not been charged for any redactions to documents required as a result of this practice.

The Treasury treats documents that are publicly available (for example, documents published on a publicly accessible website) as irrelevant to an FOI request. This means that you will not be charged for, or be provided with, publicly available documents under FOI.

In accordance with section 31 of the Act, 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.

The Treasury publishes all documents disclosed in response to FOI requests (other than personal or business information that would be unreasonable to publish) on the Treasury website at the same time as the applicant receives the response. This is consistent with the arrangements established by section 11C of the Act, which formally commenced operation on 1 May 2011.

Yours sincerely

Section 22

Secretary
Competition Policy Review

Department of Treasury Payment Options

Customer Name: _____

Customer Address: _____

_____

_____

Option 1: Bank Cheque or Australian Money Order – made out to "Collector of Public Monies"

Attached ☐

Option 2: Please debit my credit card as follows:

☐ AMEX ☐ VISA ☐ Mastercard

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Card Number

☐ Expiry Date (/) ☐ CCV Number ☐ Total Amount ($)

☐

Name on Card

☐

Signature of card holder

Office Use Only			
File Number:		*Trim Number:*	
Cost Centre:		*GL Code:*	
Customer Number:		*DAN Number:*	

RIGHTS OF REVIEW, WHERE CHARGES IMPOSED

INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the Freedom of Information Act gives you the right to apply for an internal review of the decision to impose a charge for documents in accordance with your request.

Application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

Application for a review of the decision should be addressed to:

The Treasury
Langton Crescent
PARKES ACT 2600

Attention: Parliamentary and Legal Services Unit

OR

2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

Applications for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner
Office of the Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

AND/OR

3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner
Office of the Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.

From: foi@treasury.gov.au [mailto:foi@treasury.gov.au]
Sent: Friday, 14 November 2014 5:58 PM
To: FOI
Subject: Freedom of Information request [SEC=UNCLASSIFIED]

Name
Mr Blair Davies

Organisation
Australian Taxi Industry Association

Phone
07 3467 3560

Email
Section 47F @atia.com.au

Address Line 1
PO Box 1388

Address Line 2

Suburb/Town
North Lakes

State
Queensland

Postcode
4509

Country
Australia

Documents sought after
1. All records (including e-mails, text messages, memos, file notes, letters, source documents, reference documents, advices, briefing papers, working papers, position papers, documented analysis, reports or other documentation) held in the Commonwealth Treasury Department relating to the preparation, and / or publishing, of "Box 1.1: Regulatory treatment of the ?sharing economy? ? the example of Uber", on page 19 of the Competition Policy Review ??Draft Report September 2014 (ISBN 978-1-925220-08-7).

2 All records (including e-mails, text messages, memos, file notes, letters, and other documentation) of advice, analysis, briefing papers, working papers, position papers, reports or other documentation held in the Commonwealth Treasury Department that mentions or otherwise references the company Uber Australia Pty Ltd, Uber's products and / or services, or ride-sharing services in general (including ridesharing, rideshare services, and ride-share services).

From: Blair Davies [mailto:Section 47F @atia.com.au]
Sent: Tuesday, 2 December 2014 6:25 PM
To: FOI
Subject: Re: Freedom of Information Request to Treasury [SEC=UNCLASSIFIED]

Dear Sir/Madam

Thank you for the email below and attachment.

Further to my phone conversation with Section 22 , Senior Adviser - Parliamentary and Legal Services Unit, today (02/12/14: 1414-1445 AEDST), I confirm the following -

1. Subject to the Commonwealth Treasury Department confirming in writing that a large number of documents *will in fact* fall within the scope of Part 2 of my Freedom of Information Request (FOI Ref 1618), I wish to amend Part 2 of my request by restricting its scope to the Competition Policy Review Panel and Secretariat rather than the whole Commonwealth Treasury Department.
2. Subject to the Commonwealth Treasury Department confirming in writing that a large number of documents *will in fact* fall within the scope of Part 2 of my Freedom of Information Request (FOI Ref 1618), as amended in point 1 above, I wish to withdraw Part 2 of my request entirely.
3. Please note, Section 22 's letter dated 28 November 2014 only states that, "initial searches *suggest* that a large number of documents *could* fall within the scope". As currently framed, Section 22 's intention to refuse Part 2 of FOI Ref 1618 appears to represent unsatisfactory compliance with her obligations under the Freedom of Information Act 1982.
4. I confirm that on 14 November 2014, I called the Competition Policy Review secretariat to make enquiries about the drafting Box 1.1 in the Competition Policy Review draft report (September 2014). Section 22 (?) returned my call the same day (14/11/14: 15.31-1554 AEDST) and advised the following –
    - Box 1.1 was drafted by a "person near him";
    - the drafter was unavailable to answer enquiries;
    - the drafter did not rely on any submission to draft Box 1.1 because any such source would have been acknowledged if that had been the case;
    - the drafter rather relied on the "general understanding" of the matters presented in Box 1.1 and not any specific sources (e.g. particular media reports) or representations (e.g. meetings with Uber) or experiences (e.g. using or supplying Uber products);
5. The advice provided in relation to Part 1 of FOI Ref 1618 by Section 22 in her letter is not consistent or reconcilable with the advice provided by Section 22 . Whereas Section 22 advised that Box 1.1 was prepared without reliance on specific submission material, reference material or media reports, Section 22 s letter states that, "*four source documents used in the preparation of Box 1.1.*" On inspection the documents Section 22 's letter refers to comprise –
    - 1 submission (NSW Government);
    - 1 overseas document (CPUC); and
    - 2 media reports (SMH articles).

6. While Section 22 's letter may have provided an appropriate answer to my enquiry of Section 22 (?) on 14 November 2014, it is not at all satisfactory as a response to Part 1 of FOI Ref 1618. Please note, Part 1 of FOI Ref 1618 includes *all records* in relation to the preparation and publishing of Box 1.1. Importantly, it therefore includes all communications in relation to the preparation and publishing of Box 1.1. It also includes all drafts and revisions of Box 1.1. The supply of the 4 references is manifestly incomplete for the purposes of the scope of FOI Ref 1618.
7. As currently presented, Section 22 's intention to refuse Part 1 of FOI Ref 1618 also appears to represent unsatisfactory compliance with her obligations under the Freedom of Information Act 1982.
8. For completeness, I confirm that I do *not* wish to revise Part 1 of FOI Ref 1618.

Regards

Blair Davies
CEO
Australian Taxi Industry Association

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e: Section 47F @atia.com.au
w: www.atia.com.au

On 28 Nov 2014, at 3:30 pm, FOI <FOI@treasury.gov.au> wrote:

Dear Mr Davies

Please find attached correspondence in relation to your FOI request of 14 November 2014.

Regards

FOI Team
Parliamentary and Legal Services Unit
Ministerial and Communications Division
The Treasury, Langton Crescent, Parkes ACT 2600
Phone: (02) 6263 2800
Email: foi@treasury.gov.au