

Information Act 2002 Guideline

Waiver or reduction of fees

March 2021

Section 156 of the *Information Act 2002* establishes the prima facie position that a public sector organisation can impose fees so that applicants contribute to the costs of processing FOI applications.¹ A mere likelihood that information will be disclosed does not require waiver or reduction.

However, an organisation has a discretion to waive or reduce an FOI application or processing fee if it considers waiver or reduction appropriate, having regard to s156(6):

- (a) the circumstances of the application, including any impecuniosity or indigence of the applicant; and
- (b) the objects of the Act.

Financial hardship

Impecunious is defined as “having little or no money”, while indigent is defined as “in need” (*Aust Concise Oxford Dict* (3rd ed)). The Victorian AAT has stated that impecunious, “in the context of the FOI Act of Victoria, does not mean having no money at all or being utterly destitute but, rather, means being poor, or in want of money, or having little money, or being unable reasonably to afford the access charges”.²

It is not necessary for an applicant to be in financial hardship in order to establish grounds for waiver or reduction. Other factors may justify a decision to waive or reduce a fee even if the applicant is well-resourced or chooses not to provide information about their financial status.

Circumstances of the application and objects of the Act

Both the “circumstances of the application” and the “objects of the Act” allow the consideration of a wide range of factors. It is the Commissioner’s view that s156(6) is sufficiently broad to permit consideration of general public interest factors favouring disclosure of the information sought.

Relevant questions when considering the public interest in disclosure, may include:

- Would disclosure contribute to better informed debate about an issue of public significance?
- Would disclosure otherwise be in the public interest, e.g. by increasing public understanding of the way that government carries out its functions, or by informing the public about public health and safety or environmental issues.
- Has there been public debate about the issue?
- Is disclosure likely to lead to publication of the information or to publication of information based on analysis or other use of the information?
- Has any identified public interest already been satisfied by prior disclosure of information or would it be satisfied by disclosure of a more limited range of information?

A finding that disclosure of information would be in the public interest for the purposes of

¹ *Re Herald and Weekly Times & Dept of Finance and Administration* [2000] AATA 506 (Justice O’Connor, President, 22 June 2000), paragraph 48.

² *Re Larson and Office of Corrections* (AAT of Victoria, Howie PM, 19 June 1990, unrep), quoted by the WA Information Commissioner in *Re Y and State Housing Commission of Western Australia* [1998] WAICmr 18 (16 July 1998), paragraph 14.

deciding whether to waive or reduce a fee does not preclude a decision by the organisation that particular information sought in the application is exempt from disclosure.

Applying for waiver or reduction

An applicant can apply for waiver or reduction of a fee either when making an FOI access application or following notification of an estimate of the processing fee. No special form is required however a form that can be used is available [online](#).

To assist an organisation to deal with an application, an applicant may provide:

- Evidence of the applicant's financial situation. This may involve anything from an individual providing evidence that they hold a concession card or providing recent financial statements.
- Reasons why disclosure of the information sought would be in the public interest (and why prior publication has not satisfied that public interest).
- A description of the prospects for publication of the information or other use of the information for the public benefit.
- Anything else about the circumstances of the application that warrants waiver or reduction.

Previous decisions

Some cases from other jurisdictions are listed below. Applicants should be aware that there is significant variety in the form of waiver and reduction provisions, as some are very narrow, relying on strict requirements such as qualification for a particular benefit.

- Information about agency decision not to register applicant as electrical contractor for tender purposes – applicant had not been in business for 18 months – agency reduced charges - applicant impecunious – complete waiver of charges. *Re Y and the State Housing Commission of Western Australia* [1998] WAICmr 18 (16 July 1998).
- Information on ministerial travel, accommodation and entertainment – whether public interest in disclosure – 75,000 documents sought – travel undertaken some time ago –no guarantee of publication – applicant profitable business – no financial hardship – would receive commercial benefit from disclosure – no waiver or reduction. *Re Herald and Weekly Times & Department of Finance and Administration* [2000] AATA 506, paragraphs 33-50.
- Information on Defence powers to remove obstacles over 15m high (including lopping trees) – applicant a developer with many properties in area – whether public interest in disclosure – individual interest of applicant – no evidence that information would be published – no substantial section of the public would be advantaged - financial hardship not raised – no waiver or reduction. *Re Donaldson & Department of Defence* [2001] AATA 853 (12 October 2001).
- Advice of Foreign Investment Review Board on ownership of Fairfax Group, and Ministerial responses – whether public interest in disclosure – all documents were sought by a Senate committee – access was granted to some – fees reduced by half. *Re Proudfoot and Department of the Treasury* (No.A94/82, 25 October 1994), paragraphs 21-25.

This guideline is produced by the Information Commissioner to promote awareness and understanding about the *Information Act 2002*. It is not a substitute for the Act. You should read the relevant provisions of the Act to see how it applies in any particular case.

Any views expressed in this guideline about how the Act works are preliminary only. In every case, the Commissioner is open to argument by a member of the public or a public sector organisation that a different view should be taken.