

## **FREEDOM OF INFORMATION CASE NOTES**

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### **Complaint lodged two months late *Information Act* s106**

The Complainant lodged an application for information with a public sector organisation. The organisation refused to provide the information requested at first instance. At internal review, the Department agreed to provide information that had been located once the Complainant paid a processing fee of \$175. The Complainant objected to paying the requested processing fee.

In the event that a Complainant is unhappy with the internal review decision of an organisation, including a decision about fees or charges, that person has 90 days to lodge a complaint with this Office. However, in this case, the Complainant lodged his complaint approximately 150 days after receiving the internal review decision.

This Office has the discretion to reject a complaint for a range of reasons, including when it is out of time. The Office relied on the case of *Lucic v Nolan* (1982) 45 ALR 411, which held that “an applicant for an extension of time maintains throughout the burden of showing why, in all the circumstances, the extension of time should be granted”. The cases of *Young and Worker’s Compensation Board of Queensland* (1994) 1 QAR 543, and *Hickey v Australian Telecommunications Commission* (1983) 47 ALR 517 were also referred to in order to support this position, while clarifying that the applicant need not establish ‘special circumstances’, but rather just to acknowledge that an extension of time is an ‘indulgence’ and a complainant must prove that he or he is entitled to it in a particular case.

In this case, the Complainant was well educated, experienced with the FOI process in particular, and had no apparent practical reason for failing to lodge his complaint within the relevant time frame. This Office also noted that the substance of the Complainant’s case did not involve a compelling miscarriage of justice. Even if the Complainant were able to establish that the processing fee ought to be reduced, such a reduction was “likely to be small” and hence “any prejudice to the Complainant if the complaint is rejected at this stage will be minimal”. This Office considered the complaint raised little or no public interest issues in terms of its substance, but that there is a public interest in maintaining the time frames provided in the Act unless there is a good reason not to, and the time frame provided here was already generous.

In all the circumstances, this Office exercised its discretion not to accept the complaint. It was rejected in accordance with section 106 of the Act.