

FREEDOM OF INFORMATION ACT 1989

**REVOCAION, DECLARATION AND
DETERMINATION OF FEES AND CHARGES**

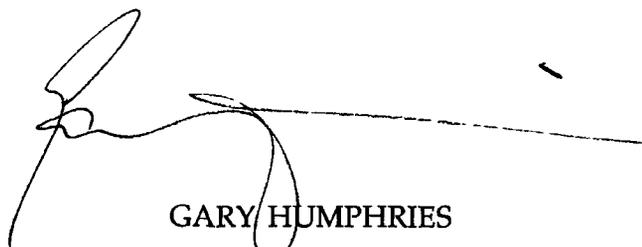
DETERMINATION No. 132 of 1995

Under sections 4(6) and 80 of the *Freedom of Information Act 1989*, (the Act), I REVOKE the Declaration of Application Fees and Determination of Fees and Charges made by Determination No. 12 of 1994 dated 22 February 1994 and notified in the Australian Capital Territory Gazette No. S28 of 23 February 1994.

Under section 4(6) of the Act I DECLARE that application fees are applicable in respect of applications under sections 14(1) and 59(1) of that Act except where that application relates to the personal affairs of the applicant or the person on whose behalf the application is made; and

Under section 80 of the Act I DETERMINE that the fees and charges payable for the purposes of the Act, except where the request is for a document that relates to the personal affairs of the applicant or the person on whose behalf the application is made, shall be in accordance with the attached DETERMINATION.

Dated this 19th day of September 1995



GARY HUMPHRIES
Attorney-General.

This is page 1 of the determination made by the Attorney-General under the *Freedom of Information Act 1989* on the 19th day of September 1995.

DETERMINATION OF FEES AND CHARGES

Interpretation

1. (1) In this determination-

“Act” means the *Freedom of Information Act 1989*;

“relevant agency”, in relation to a request, means the agency to which the request has been made or is taken, under section 15 of the Act, to have been made;

“relevant Minister”, in relation to a request, means the Minister to whom the request has been made or is taken, under section 15 of the Act, to have been made;

“written document”, in relation to a request, means a document other than-

- (a) a document produced for the purposes of the request by an agency or a Minister by
 - (i) the use of a computer or other equipment that is ordinarily available to the agency, or ordinarily available in an office of the Minister, for retrieving or collating stored information; or
 - (ii) the making of a transcript from a document held in the agency or in an office of the Minister, being a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form; or
- (b) a document from which sounds or visual images are capable of being produced.

(2) In this determination, unless the contrary intention appears, a reference to the time spent by an agency or a Minister in searching for or retrieving a document does not include-

This is page 2 of the determination made by the Attorney-General under the *Freedom of Information Act 1989* on the 19th day of September 1995.

- (a) where the document is not found in the place in which, according to the filing system of the agency or of the office of the Minister, as the case may be, (in this subclause called the "relevant filing system") it ought to be located - any time other than such time as would have been spent by the agency or Minister, as the case may be, in searching for or retrieving the document if the document had been found in that place; or
- (b) where the relevant filing system ought reasonably to have indicated, but does not indicate, the place in which the document is located - any time other than such time as would have been spent by the agency or Minister, as the case may be, in searching for or retrieving the document if the relevant filing system had indicated the place in which the document is located and the document had been found in that place.

(3) For the purposes of this determination, time spent by a person in searching for or retrieving an official document of a Minister shall be taken to be time spent by the Minister in searching for or retrieving the document.

Liability to pay charges

2. (1) Where an applicant has made a request for access to a document of an agency or an official document of a Minister, the agency or Minister may make a decision whether the applicant is liable to pay, in respect of the request or in respect of the provision to the applicant of access to the document, any of the charges applicable under this determination, other than an application fee.

(2) Where an agency or a Minister has, under subclause (1), made a decision that an applicant is liable to pay a charge, then, except where clause 5, 6 or 7 applies, the charge is payable by the applicant in the amount, or at the rate fixed, by or in accordance with the Schedule.

(3) A charge shall not be imposed under Items 1 or 2 of Part I of the Schedule or under Item 1 of Part II of the Schedule for the first 10 hours of time spent by the agency or Minister. In calculating the time spent, time in respect of Item 2 of Part I of the Schedule shall be counted first and time in respect of Item 1 of that Part shall be counted second.

This is page 3 of the determination made by the Attorney-General under the *Freedom of Information Act 1989* on the 19th day of September 1995.

Charges applicable generally

3. Subject to this determination-

- (a) the charges set out in Part I of the Schedule are applicable in respect of a request for access to a document; and
- (b) the charges set out in Part II of the Schedule are applicable in respect of the provision of access to a document to which a request relates.

Application fees

4. (1) The application fee in respect of an application under subsection 14(1) of the Act is \$15.

(2) The application fee in respect of an application under subsection 59(1) of the Act is \$15.

Liability for charges where access may be provided in more than one form

5. Where-

- (a) access to a document to which a request relates may be provided in any of 2 or more forms;
- (b) the applicant has not requested access to the document in a particular form; and
- (c) the amount of the charge or charges that, but for this clause, the applicant would be liable to pay in respect of the request and the provision of access, in the form selected by the relevant agency or the relevant Minister, to the document exceeds the lowest amount (in this clause called the "prescribed amount") of the charge or charges that the applicant would have been liable to pay in respect of the request and the provision of access to the document if access had been given in some other form;

the amount of the charge or charges that the applicant is liable to pay shall not exceed the prescribed amount.

This is page 4 of the determination made by the Attorney-General under the *Freedom of Information Act 1989* on the 19th day of September 1995.

Charges based on estimates of time etc. may be fixed in certain cases

6. (1) Where, at the time (in this subclause called the "relevant time") that an agency or a Minister proposes to notify an applicant under section 28 of the Act that he or she is liable to pay a charge in respect of the request that he or she has made for access to a document, the agency or Minister has not taken any or all of the steps necessary to enable the agency or Minister to make a decision on the request, the agency or Minister may fix, as the amount of the charge, such amount as would be the amount ascertained in accordance with the Schedule in respect of the charge if, at the relevant time, all steps that would, in the opinion of the agency or Minister, be necessary to enable a decision to be made on the request had been taken by the agency or Minister.

(2) Where, at the time (in this subclause called the "relevant time") that an agency or a Minister proposes to notify an applicant under section 28 of the Act that he or she is liable to pay a charge (other than a charge in relation to which subclause (3) applies) in respect of the provision of access to a document, the agency or Minister has not taken any or all of the steps necessary to enable the applicant to be given access to the document, the agency or Minister may fix, as the amount of the charge, such amount as would be the amount ascertained in accordance with the Schedule in respect of the charge if, at the relevant time, all steps that are, or would, in the opinion of the agency or Minister, be necessary to enable the applicant to be given access to the document had been taken by the agency or Minister.

(3) Where-

- (a) access to a document is to be given to an applicant in the form of an opportunity to inspect the document under the supervision of an officer; and
- (b) the relevant agency or the relevant Minister makes a decision that the applicant is liable to pay a charge in respect of the period during which the officer is to supervise the inspection;

the relevant agency or the relevant Minister may fix, as the amount of the charge, the amount that would be ascertained in accordance with the Schedule in respect of the charge if;

- (c) at the time that the decision is made, the applicant had availed himself or herself of the opportunity so to inspect the document; and
- (d) the period during which the officer supervised the inspection was such period as is determined by the agency or Minister to be the period reasonably required for the inspection.

This is page 5 of the determination made by the Attorney-General under the *Freedom of Information Act 1989* on the 19th day of September 1995.

(4) Where an agency or a Minister has, in accordance with subclause (1), (2) or (3), fixed an amount in respect of a charge that an applicant is liable to pay, the applicant is, subject to clause 7, liable to pay the charge in the amount so fixed.

(5) In subclause (3), a reference to an opportunity to inspect a document is, in relation to a document that is an article or thing from which sounds or visual images are capable of being produced, a reference to the arrangements made for the applicant to hear or view those sounds or images and "inspection" shall, in relation to such a document, be construed accordingly.

Readjustment of liability for charges in cases where clause 6 applies

7. (1) Where -

(a) an agency or a Minister has, in accordance with subclause 6(1), (2) or (3), fixed an amount in respect of a charge that an applicant is liable to pay; and

(b) after-

(i) in the case of a charge in respect of a request for access to a document - the agency or Minister has made a decision on the request;

(ii) in the case of a charge (other than a charge in respect of which an amount has been fixed in accordance with subclause 6(3)) in respect of the provision of access to a document - the agency or Minister has taken all steps necessary to enable the applicant to be given access to the document; or

(iii) in the case of a charge in respect of the provision of access to a document, being a charge in respect of which an amount has been fixed in accordance with subclause 6(3) - the applicant has had access to the document;

it is ascertained that the amount so fixed in respect of the charge does not equal the amount (in this clause called the "prescribed amount") that, but for clause 6, the applicant would, under this determination, be liable to pay in respect of the charge;

the agency or Minister shall, subject to subclause (2), fix, as the amount of the charge, the prescribed amount.

This is page 6 of the determination made by the Attorney-General under the *Freedom of Information Act 1989* on the 19th day of September 1995.

(2) Where an agency or a Minister makes a decision not to grant a request for access to a document, the agency or Minister shall not fix, under subclause (1), an amount in respect of a charge unless the prescribed amount in relation to the charge is less than the amount fixed in respect of the charge in accordance with subclause 6(1), (2) or (3), as the case may be.

(3) Where an agency or a Minister has, in accordance with subclause (1), fixed an amount in respect of a charge that an applicant is liable to pay, the applicant is liable to pay that amount in respect of the charge in lieu of the amount fixed in respect of the charge in accordance with subclause 6(1), (2) or (3), as the case may be.

(4) Where an applicant is, under subclause (3), liable to pay to an agency or Minister in respect of a charge an amount fixed in accordance with subclause (1), then

- (a) if the applicant has, under subclause 6(4), paid to the agency or Minister in respect of the charge an amount that exceeds the first-mentioned amount - the applicant is entitled to a refund of an amount equal to the amount of the excess; or
- (b) if the applicant has, under subclause 6(4), paid to the agency or Minister in respect of the charge an amount that is less than the first-mentioned amount - the amount so paid shall be deemed to have been paid as a deposit on account of the charge.

Charges to be paid before access is granted

8. (1) Subject to subclause (2), where an applicant is liable to pay a charge in respect of a request for access to a document or in respect of the provision of access to the document, the charge shall be paid to the relevant agency or the relevant Minister before access is granted to the document.

(2) Subclause (1) does not apply to a charge of a kind payable in an amount fixed in accordance with subclause 6(3).

(3) In this clause, "charge" does not include a charge or any part of a charge that has been remitted in accordance with section 29 of the Act.

Deposits

9. (1) Where

- (a) an agency or a Minister has made a decision that an applicant is liable to pay, in respect of a request or in respect of the provision of access to the document to which the request relates, a charge or charges; and

This is page 7 of the determination made by the Attorney-General under the *Freedom of Information Act 1989* on the 19th day of September 1995.

(b) the amount, or the estimated amount, of that charge or of those charges exceeds \$25;
the agency or Minister may make a decision whether the applicant is required to pay a deposit on account of the charge or charges that the applicant is liable to pay.

(2) Where an agency or a Minister has made a decision that an applicant is required to pay a deposit on account of the charge or charges that the applicant is liable to pay, the amount of the deposit is such amount, not exceeding

(a) where the amount, or the estimated amount, of the charge or charges exceeds \$25 but does not exceed \$100 - \$20; or
(b) where that amount or estimated amount exceeds \$100 - 25% of that amount or estimated amount;
as is determined by the agency or Minister.

Applicant to be notified of liability to pay deposit

10. (1) Where, by virtue of a decision of an agency or a Minister, an applicant is required to pay a deposit on account of a charge or charges, the agency or Minister shall notify the applicant in writing accordingly and shall specify in the notification the amount of the deposit.

(2) A notification under subclause (1) in respect of a deposit on account of a charge or charges shall be given to the applicant at the same time as the notification under section 28 of the Act in relation to the charge or charges is given.

Deposit not to be refunded

11. A deposit paid by an applicant on account of a charge or charges, or any part of such a deposit, shall not be refunded to the applicant otherwise than in compliance with a decision under section 29 of the Act to remit in whole or in part the charge or charges.

This is page 8 of the determination made by the Attorney-General under the *Freedom of Information Act 1989* on the 19th day of September 1995.

**SCHEDULE
PART I Clause 3**

**CHARGES APPLICABLE IN RESPECT OF A REQUEST
FOR ACCESS TO A DOCUMENT**

Item No. Charge	Amount or Rate of Charge
1. Where the request relates to a document other than a document in relation to which a charge is applicable under Item 2 - a charge in respect of the time spent by the relevant agency or the relevant Minister in searching for or retrieving the document	\$15.00 per hour
2. A charge in respect of the time that is spent (other than on an application under section 59 of the Act for the review of a decision) by an agency or Minister in deciding whether to grant, refuse or defer access to the document or to grant access to a copy of the document with deletions, including time spent- (a) in examining the document; (b) in consultation with any person or body; (c) in making a copy with deletions; or (d) in notifying any interim or final decision on the request	\$20.00 per hour

This is page 9 of the determination made by the Attorney-General under the *Freedom of Information Act 1989* on the 19th day of September 1995.

PART II Clause 3

**CHARGES APPLICABLE IN RESPECT OF THE PROVISION OF ACCESS
TO A DOCUMENT TO WHICH A REQUEST RELATES**

Item No.	Charge	Amount or Rate of Charge
1.	Where access to the document to which the request relates is given- (a) in the form of an opportunity to inspect the document under the supervision of an officer; or (b) in the case of a document that is an article or thing from which sounds or visual images are capable of being produced - in the form of arrangements for the applicant to hear or view those sounds or visual images under the supervision of an officer; a charge in respect of the period during which the officer supervises the inspection, hearing or viewing, as the case may be	if the period does not exceed half an hour - \$6.25: if the period exceeds half an hour, for each half-hour, and any period not exceeding half an hour, included in the period - \$6.25
2.	Where the request relates to a written document, and access to the document is given in the form of the provision of a photocopy of the document - a charge in respect of the number of pages of photocopy provided to the applicant	free for the first 200 pages and thereafter at 20 cents per page