

Freedom of Information (Fees) Determination 2017 (No 2)

Disallowable instrument DI2017–312

made under the

Freedom of Information Act 2016, s 104 (Determination of fees)

EXPLANATORY STATEMENT

The Minister may determine fees for the *Freedom of Information Act 2016* (the FOI Act).

The purpose of this determination is to set fees for the FOI Act that are payable relative to the quantity of information provided in response to a freedom of information access application. Previously, under the *Freedom of Information Act 1989* and DI2017-94, fees payable in respect of requests for government information were charged based on the time spent by the agency or Minister in processing and deciding a request for information.

Section 104(2)(b) of the FOI Act now requires that fees for services do not vary based on the time spent by an agency in searching for or retrieving information or making a decision about an access application (which includes performing related activities). By contrast, section 104(3) clarifies a fee for service can scale relative to the quantity of information provided in response to an application.

This determination prescribes a general fee of \$0.35 for each page of information provided in response to an access application, whether the information is provided in hard copy or electronic form. This fee will apply to each page after the first 50 pages of information, in accordance with section 104(4) of the FOI Act.

The fee of \$0.35 per page is based on a cost recovery basis of the estimated cost for an agency in providing the range of printed information that be sought under a freedom of information request. It also seeks to take into account the overriding social policy objective of the service. Section 6 of the FOI Act articulates the scheme's social policy objectives, including to facilitate and promote disclosure of the maximum amount of government information, promptly and at the lowest possible cost.

Under section 47(4) of the FOI Act, an applicant has some discretion to direct the format in which an agency or Minister must provide requested information. Where an applicant requests delivery of information by post, the determination provides that the agency may recover the actual costs of postage from the applicant, in addition to the \$0.35 fee per page of information.

Where information is provided on an electronic storage device (eg a USB, hard drive or other storage device), the determination also allows the agency to charge for the actual cost of purchasing the device. Similarly, a fee is payable by an applicant for the actual cost incurred in printing requested information for the applicant. In these circumstances, agencies may choose to charge these fees in addition to the base \$0.35 fee per page.

The determination also contemplates charging ‘actual cost’ in circumstances in which technical information is retrieved from a particular system or notes are translated from shorthand or another coded format.

Agencies and Ministers will generally have discretion to charge a lower fee or waive a fee under the FOI Act. Under section 107, the agency or Minister must waive a fee for service under the FOI Act in certain circumstances. These include where the applicant is a member of the ACT Legislative Assembly, a concession card-holder who demonstrates a material connection to the information and a not-for-profit organisation whose application relates to its activities or purposes. In addition, a fee may be waived if the information requested is of ‘special benefit to the public’.