



**Australian Government**  
**Department of Health**

Departmental Reference: FOI 170-1314

Mr Renai LeMay  
Editor and Publisher  
Delimiter

Via email: [renai@delimiter.com.au](mailto:renai@delimiter.com.au)

Dear Mr LeMay

**Your Freedom of Information Request No. 170-1314**

I refer to your letter of 24 February 2014 seeking waiver or reduction of the charges in relation to your request for access under the *Freedom of Information Act 1982* (the FOI Act) to:

*"I refer to the media release issued by Health Minister Peter Dutton on 20 December, noting that the Government had received a review of the Personally Controlled Electronic Health Records system. This FOI request seeks the full text of that review of the PCEHR"*

I am writing to advise you of my decision.

**Decision**

I have decided to impose the charges in full.

My reasons for this decision are set out at Attachment A.

**Effect of my decision**

As a consequence of my decision to impose the charges in full, you are liable to pay a charge of \$244.04 for the processing of your request.

The regulations prescribe that where a charge is imposed and exceeds \$100.00, a deposit of up to 25 per cent of the charges may be sought. I have decided you are required to pay a deposit of \$61.01 before the processing of your request may continue.

Once your request has been processed you will not receive access to any documents the decision-maker decides to release to you until the balance is paid.

**Review rights**

You are entitled to seek review of this decision. Your rights are set out at Attachment B.

**Relevant provisions**

The FOI Act including the provisions relevant to your request can be accessed from the Comlaw website using the following: <http://www.comlaw.gov.au/Details/C2014C00122>

**Contacts**

If you require clarification of any of the matters discussed in this letter you should contact the FOI Unit on (02) 6289 1666 or via email at [foi@health.gov.au](mailto:foi@health.gov.au)

Yours sincerely



Linda Jackson  
Assistant Secretary  
eHealth Policy Branch  
eHealth Division

26 March 2014

## ATTACHMENT A

### REASONS FOR DECISION

#### Findings of fact and reasons for decision

Under the FOI Act, in determining whether to waive or reduce the charges, a decision-maker is required to take into account a) whether paying the charges would cause the applicant financial hardship, and b) whether giving access to the document is in the interests of the public, or a substantial section of the public. A decision-maker may take into account any other factor he or she considers relevant.

#### *Will the payment of the charge cause financial hardship?*

Your application for waiver or reduction of the charge did not include a contention that paying the charge will cause you financial hardship. There is, accordingly, no basis on which I can reduce or waive the charge for reasons of financial hardship to you.

#### *Is the giving of access in the public interest?*

You have submitted that *"the charges levied be reduced, based on the case that there is a substantial public interest in this document being fully released"*. I have taken your submission into account in determining whether disclosure would benefit the public. I note that your submission states *"any article I would publish stemming from the report's publication would be read extensively by Australia's technology and electronic health community"* and that from this action the release will flow to the public.

Giving access will be in the public interest where it will be of benefit to the public at large. It is not enough that the information in the document sought is interesting or of mere curiosity value to the public at large. It is also not sufficient that the document is of benefit to the applicant.

On balance, I am not satisfied that there is a general public interest or the interest of a substantial section of the public in the information in the document. There is, accordingly, no basis for me to reduce or waive the charge on the ground of public interest.

Consequently, I have decided to impose the charges in full.

I note that my decision on public interest goes only to the question of whether the charges should be imposed, and not to the issue of whether the documents should ultimately be disclosed.

### **Material taken into account**

In making my decision, I had regard to the following:

- The terms of your request for waiver, and your submissions and other supporting material;
- The content of the document to which you sought access;
- Advice from Departmental officers with responsibility for matters relating to the documents to which you sought access;
- The relevant provisions of the FOI Act;
- The Department's guidance material on the FOI Act; and
- Guidelines issued by the Australian Information Commissioner under s93A of the FOI Act.

**REVIEW RIGHTS  
YOUR REVIEW RIGHTS**

If you are dissatisfied with this decision, you have certain rights of review available to you. You can apply for either internal review under subsection 54(2) of the FOI Act or Australian Information Commissioner (AIC) review under subsection 54L(2) of the FOI Act. You do not have to apply for internal review before seeking AIC review:

- if you choose internal review you can still apply for AIC review if you are dissatisfied with the internal review decision;
- if you choose AIC review, you will not be able to seek internal review of that decision and your only avenue will then be Administrative Appeals Tribunal (AAT) review.

**Internal Review**

If you choose to apply for an internal review you must do so within 30 days after receiving this notification of my decision.

An internal review will be conducted by a different officer of this Department from the original decision-maker. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to:

FOI Coordinator (MDP 350)  
Department of Health  
GPO Box 9848  
CANBERRA ACT 2601  
Email: [foi@health.gov.au](mailto:foi@health.gov.au)

**Australian Information Commissioner Review**

If you choose to apply for review by the Australian Information Commissioner you must do so within 60 days. The Australian Information Commissioner can be contacted by:

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
Phone: 1300 363 992

In making your application you need to provide:

- An address for notices to be sent (this can be an email address); and
- A copy of this decision

Although not required, you can set out the reasons for review in your application. An application for AIC review must be made:

- Within 60 days of this notice (if you do not request an internal review) or within 60 days of notice of the internal review decision.

**Administrative Appeals Tribunal Review**

You may also apply to the AAT for review of a decision made either by way of internal review or by Australian Information Commissioner review in the event that you are

dissatisfied with either, regardless of which you may choose. (Note: if you are dissatisfied with an internal review decision you must apply for AIC review.)

The AAT is a completely independent review body with the power to make a fresh decision. Your application to the AAT should be accompanied by an application fee – currently \$816, which may be refunded in some instances. The fee may be waived by the AAT where financial hardship is shown.

The AAT has a help desk to advise on its procedures. More information is available on the AAT's website [www.aat.gov.au](http://www.aat.gov.au).

### **Processing Complaints to the Australian Information Commissioner**

You may also make a complaint to the Australian Information Commissioner about action taken by the Department in relation to your application. The complaint needs to be in writing and identify the agency against whom the complaint is made.

There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.