

IMPORTANT FOI UPDATE

Warning against incorrect access charge calculations

Since the introduction of the new *Freedom of Information (Access Charges) Regulations 2014*, (“Regulations”) we have identified that many agencies are adopting what we consider to be incorrect practices for the calculation of access charges under those Regulations and under the *Freedom of Information Act 1982* (Vic) (“FOI Act”).

The error stems from the fact that some access charges in the Regulations are now expressed as being payable in terms of a certain number of “fee units” under *Monetary Units Act 2004* (Vic) (“**MU Act**”) per hour or part of an hour (or similar).

For example, the access charges for search time for documents (other than those documents generated from computers under s 19) are payable at the rate of 1.5 fee units per hour or part of an hour.¹ From 1 July 2014 a fee unit has been \$13.24.² Therefore, under the MU Act, the **charge rate** must be calculated by multiplying the number of fee units (1.5) by the amount fixed by the Treasurer as a fee unit (\$13.24). The product of that multiplication is \$19.86.

In this example, it is that figure of \$19.86 which must be multiplied by the number of hours (or parts of an hour) to calculate the search time access charge. But it does not stop there. Section 7(3) of the MU Act provides that the **amount** of the fee, charge or other amount provided for as payable by an Act or statutory rule (like the Regulations) may be rounded to the nearest 10 cents.

In our view, that requires that the rounding to the nearest 10 cents occurs **after** the monetary value of 1.5 fee units (ie \$19.86) is multiplied by the number of hours or parts of an hour, **not before**. As demonstrated in the table below, this will give an overall lower access charge where more than one hour of searching has occurred, consistent with the objects of the FOI Act in providing access at the lowest reasonable cost³ and inexpensively⁴.

No of hours	Wrong method	Correct charge
1	\$19.90	\$19.90
2	\$39.80	\$39.70
3	\$59.70	\$59.60
4	\$79.60	\$79.40
5	\$99.50	\$99.30
10	\$199.00	\$198.60

¹ Item 1, Schedule in the Regulations.

² For more information see <http://www.foisolutions.com.au/documents/Update3-14.pdf>

³ Section 3(2), FOI Act.

⁴ Section 16(1), FOI Act.

Similar issues arise in calculation of access charges for:

- supervised inspection time (Item 2 Regulations);
- explanation of health information by a health service provider (Item 8, Regulations);
- providing a summary of health information (Item 10, Regulations).

To assist agencies to make those calculations, FOI Solutions has prepared a **free Excel Spreadsheet calculator**. We are happy to provide it to any interested agencies. If you would like your free copy of the calculator, please feel free to email Bronwyn in our office: bronwyn@foisolutions.com.au with your request for a copy of the free Excel Spreadsheet calculator for access charges.

If you have any queries about anything in this email update, please do not hesitate to contact any of our legal staff:

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