



FREEDOM OF INFORMATION CHARGING POLICY

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Access to Information

Policy on Fees and Charges

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1.0 SCOPE OF POLICY

- 1.1 This policy applies to information requests falling under Section 1(1) of the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations (EIRs) 2004 and also subject access requests for personal 'unstructured' manual information, under Section 9A of the Data Protection Act 1998 (DPA).
- 1.2 This policy does not apply to information which is otherwise available either:
- under statute, or
 - through the Council's Publication Scheme
- 1.3 The Freedom of Information Act is intended to build on existing access channels rather than replace existing access regimes. Therefore if information is reasonably accessible to applicants through other means, such as through other legislation or the Council's publication scheme, it is exempt from FOIA. Where information is otherwise available, this means the rules for costing and charging for compliance with the Act do not apply.
- 1.4 However, specific legislation and/or the Publication Scheme may provide for a charge and/or the costs of supplying information. Examples of charges excluded from the scope of this policy are:
- Subject Access requests for personal information under the DPA, (other than requests involving 'unstructured' personal information) where the statutory fee for most records is a maximum of £10 (with the exception of Education and Health records)
 - Part VI of the Representation of the People (England & Wales) (Amendment) Regulations (SI 2002/871) authorising the supply of the edited electoral register to credit reference agencies on payment of a fee
 - Fees applicable for information available via the Publication Scheme (denoted in the scheme by a £ sign)
 - Costs of communicating information available in the Publication Scheme where this is not available on line.

2. FEES REGULATIONS

- 2.1 Under Section 12 of the FOIA a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the 'appropriate limit' prescribed in Regulations.
- 2.2 Section 9A of the Data Protection Act 1998 (inserted by section 69 of FOIA) makes similar provision in respect of subject access requests for 'unstructured' personal information (ie manual records which are not held in a 'structured' filing system).
- 2.3 The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004/3244) govern the 'appropriate limit' and the fees that can be charged for the above types of information requests.

2.4 There is no 'appropriate limit' for environmental information requests, however, Regulation 8 of the Environmental Information Regulations 2004, provides for the recovery of 'reasonable' costs.

3. THE 'APPROPRIATE LIMIT'

3.1 Under Regulation 4 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (hereafter referred to as the FOIA Fees Regulations) the 'appropriate limit' is set at £450 (£600 for central government and Parliament).

3.2 The 'appropriate limit' is calculated on a standard rate of £25 per hour based on estimating how long it takes to:

- Determine if the information is held
- Locate the information or a document which may contain the information¹
- Retrieve the information, or a document, which may contain the information
- Edit or extract the releasable information contained within a document

3.3 This calculation does not take into account the time spent/costs of:

- checking that a request for information meets the requirements of FOIA
- locating information due to poor records management practice, and
- considering the application of exemptions; prejudice and/or public interest tests;
- obtaining internal or external legal advice
- considering whether a request is vexatious or repetitive
- obtaining authorisation to send out information calculating any fee to be charged; or
- providing advice and assistance under section 16 of FOIA

3.4 Based on the standard hourly rate of £25 specified in the FOIA Fees Regulations the maximum time spent finding, retrieving, collating and editing before exceeding the £450 cost limit is 18 hours.

3.5 In accordance with the FOIA Fees Regulations, information requests which do not involve more than 18 hours to answer will be processed without charging a fee.

3.6 Public authorities are not obliged to respond to a request where it is estimated the cost of complying exceeds 18 hours (ie £450) and are entitled to

- decline requests exceeding this amount; or
- it may answer them and charge a permitted fee

3.7 The actual costs of communicating information released to the applicant are recoverable. This includes the cost of printing, photocopying, postage and/or supplying the information in a particular form.

¹This can include the first time an individual working in the authority reads information to establish what is contained within a file or document, although any

subsequent readings (eg to consider exemptions), or if the information is passed to others to read, should not be included.

4. ESTIMATING THE COST OF AN INFORMATION REQUEST

FOIA Information Requests

- 4.1 The Council is committed to ensuring that the benefit of increased information rights is applied equitably, irrespective of ability to pay. Rather than routinely charging fees whenever the cost limit is exceeded, it is the Council's policy to offer advice and assistance to applicants to ensure requests are brought within the cost limit and dealt with free of charge.
- 4.2 In determining whether the 'appropriate limit' is exceeded the cost of processing the request and communicating the information, may be estimated in advance.
- 4.3 If it is estimated that a request will take less than 18 hours to complete and there is no reason to withhold the information, the request will be dealt with free of charge (save any costs which may apply under paragraphs 5, 7, 10 and/or 11)
- 4.4 If it is estimated that a request will take more than 18 hours to complete, applicants will be assisted to make the request smaller.
- 4.5 If an applicant does not accept advice and assistance and the cost continues to exceed the 'appropriate limit', the Council:
- may exercise discretion to supply some information up to this limit
 - is not obliged to comply with the request and will normally turn down requests exceeding this Limit
 - may answer the request and may charge a fee in accordance with the Information Commissioner's guidance <http://www.ico.gov.uk> (external web site).
- 4.6 If the 'appropriate limit' is exceeded and the Council decides to answer the request by applying a charge, the Fee will be based on a standard rate of £25 per hour in line with power under section 13 of FOIA unless the Council has a power under other legislation to charge an alternative rate.
- 4.7 The Fee will be based on the total chargeable hours, including the hours up to the 'appropriate limit' in line with the FOIA Fees Regulations and the Information Commissioner's guidance.
- 4.8 Where a request costs more than the appropriate limit to answer, the requirements of section 1(1) and of those parts which depend on section 1(1) cease to apply, ie there is no legal requirement to:
- issue a Fees Notice [Section 9(1)];
 - comply with the 20 working day time limit [Section 10(1)];
 - provide information in preferred format [Section 11 (1)]

however, if the Council chooses to answer a request exceeding the 'appropriate limit', it will endeavour to follow the same principles in line with the Information Commissioner's guidance.

Environmental Information Regulations (EIR) Information Requests

- 4.9 In the interests of consistency, rather than applying a 'reasonable charge', the Council has decided not to charge for EIR requests provided the cost of the EIR request, does not exceed the 'appropriate limit' specified in the FOIA Fees Regulations.
- 4.10 If it is estimated that the EIR request will take less than 18 hours to complete and there is no reason to withhold the information, the request will be dealt with free of charge (save any costs which may apply under paragraphs 5, 7, 10 and/or 11).
- 4.11 If it is estimated that a request will take more than 18 hours to complete, applicants will be assisted to make the request smaller.
- 4.12 If an applicant is not prepared to bring their request within the FOIA Fees limit, the option of paying the full estimated cost of processing the request will be given. The full cost will include the total hours involved calculated at the rate of £25 per hour, including a charge for all hours otherwise disregarded under paragraph 4.9.
- 4.13 Whilst there is no obligation to do so, the Council may exercise its discretion to supply some information even if an applicant is not prepared to pay charges applicable under paragraph 4.12.

5. AGGREGATING REQUESTS

- 5.1 The FOIA Fees Regulations provide for the costs of answering more than one request to be added together or aggregated for the purposes of estimating whether the 'appropriate limit' would be exceeded in relation to any one of the requests.
- 5.2 The Regulations state that requests can only be aggregated in the following circumstances:
- two or more requests for information must have been made to the same public authority;
 - they must be either from the same person, or from different persons who appear to the authority to be acting together or in pursuance of a campaign (section 12(4)(b) of FOIA);
 - the requests must relate to the same or similar information; and
 - they must have been received within a space of 60 consecutive working days
- 5.3 This provision is designed to prevent individuals or organisations undermining the 'appropriate limit' by splitting a request into smaller parts. Before applying

these provisions, the Council will carefully consider the reasons for believing that requests have been framed to frustrate the cost limit.

- 5.4 Whilst there is no 'appropriate limit' for EIR requests, the Council will apply the same principles for the purpose of charging.

6. REPETITIOUS / VEXATIOUS REQUESTS

- 6.1 In considering whether to refuse to answer multiple questions altogether on the grounds that they are repetitious or vexatious requests, the Council will take account of the Information Commissioner's procedural guidance available at <http://www.ico.gov.uk>

7. COMMUNICATING INFORMATION – DISBURSEMENT COSTS

- 7.1 Irrespective of whether the request is below or above the 'appropriate limit' disbursements will normally be charged where the estimated total cost exceeds £5.00.
- 7.2 Under Section 11(1) of the FOIA, authorities have a duty to take account of the applicants preferred format for receiving information. This may include:
- summarising the information
 - providing the applicant with a copy (i.e. photocopying or printing)
 - allowing the applicant to inspect a record containing the information
 - producing material in an applicant's preferred format (for example by putting it onto a CD-Rom, video or audio cassette) or
 - translating information into a language other than English at the request of the applicant
- 7.3 No charges will be applied by the Council where the costs incurred arise from meeting our obligations under the Disability Discrimination Act 1995 (eg providing information in Braille or in large type).
- 7.4 In some circumstances the Council may waive the requirement to recover the costs of disbursement.
- 7.5 Postage and Printing Costs
- 7.5.1 Applicants may be expected to meet the postage costs as set out below. Black and white documents will be copied on request. The cost of a black and white A4 photocopy or printed sheet will be charged at 15p per sheet and postal costs will be based on current Royal Mail costs (which will be subject to variation).

7.6 Other Costs

7.6.1 Other or additional costs (to postage and printing charges) incurred as a result of communicating information in a way requested by the applicant where the overall amount exceeds £5.00, will be payable. This includes but is not limited to requests to supply information on CD

Letters	1st Class from £1.70 1st Class Signed For from £3.60	2nd Class from 87p 2nd Class Signed For from £2.77
Parcels	1st Class from £4.40 Tracked 24 from £4.45 express24 from £11.90 expressAM from £15.70 express10 from £26.75	2nd Class from £3.50 Tracked 48 from £3.55 express48 from £11.35 express48large from £48.76

Rom; floppy disc; another medium, or in a language other than English.

8. **TIME LIMITS & CHARGING**

8.1 The Council usually has 20 working days to respond to FOI / EIR requests.

8.2 If disbursement costs apply for responding to a request under the 'appropriate limit' an estimated Fees Notice will be issued.

8.3 Once the Fees Notice has been issued, the clock stops and the applicant has three months to pay the charge. The request lapses after 3 months if the charge remains unpaid. Only when payment has been received and has cleared does the clock restart, and work begin on collating the information.

8.4 The Fees Notice will usually be issued before any costs are incurred in preparing to answer the request.

8.5 Although the Council is not legally compelled to do so, if it chooses to answer a request exceeding the cost limit:

- it will normally issue a Fees Notice if charging a Fee
- seek to provide the information in the format requested by the applicant
- answer the request as quickly as it can

9. REFUNDS

- 9.1 If the actual cost of answering the request turns out to be greater than the estimated cost charged, the additional cost will be borne by the Council. There is no provision for another Fees Notice to be issued.
- 9.2 If the actual cost is lower than the amount charged, the Council will consider refunding the excess amount where this is greater than £5.00
- 9.3 Care will be taken to ensure that estimated fees are as accurate as possible to prevent over or under charging.

10. PAYMENT OF FEES, DISBURSEMENTS & VAT

- 10.1 If a charge applies, the estimated fees and/or costs of supplying the information, will be payable in advance.
- 10.2 VAT - As the Act does not set a specific fee, any monies charged are not statutory fees.
- 10.3 Customs do not consider that information released under the Act constitutes an economic activity where the information could only be provided by a public authority. As such, any fees charged in these circumstances will be outside the scope of VAT. This means that no VAT should be added to the fees.
- 10.4 The key determining factor as to whether VAT is charged is whether the information is available from another source that is not a public authority. This distinction is made so as not to distort competition between the public and private sector.
- 10.5 Basically:
 - if the Council is asked for information, and the information is only available from the Council or another public authority, any chargeable fees do not attract VAT.
 - if the Council is asked for information that is available from another non public authority source, any fees do attract VAT. (This is still the case even if the authority is obliged to supply the information because the cost of answering is below the appropriate limit i.e. where the costs of similar requests may have been aggregated).

11. COPYRIGHT

- 11.1 Some of the information supplied under the Freedom of Information Act will be subject to copyright protection under the Copyright, Designs and Patents Act 1998. Information can be re-used for the purposes of research for non-commercial purposes, for private study or for news reporting and review without requiring formal consent. However, if the applicant wishes to re-use the information for commercial purposes, including publishing s/he would require the permission of the copyright holder. Failure to obtain permission

may result in an infringement of the Copyright, Designs and Patents Act 1998. Permission to re-use copyright protected information owned by the Council may be granted in the form of a licence and the applicable charges will be advised on request. Permission to re-use information supplied by the Council which is copyright protected by another party, must be sought from the third party copyright holder.

12. SUMMARY OF CHARGING POLICY

12.1 In respect of finding, locating, retrieving and extracting information and the disbursements incurred in answering information requests covered by this policy:

there will be no charge for servicing an FOIA and/or EIR request requiring less than 18 hours (calculated in accordance with paragraphs 3.0 to 3.7) based on a standard hourly rate of £25

- where the time is estimated to exceed 18 hours a FOIA applicant will be offered advice and assistance to bring the request within the cost limit of £450
- the Council reserves the right not to comply with a FOIA request exceeding £450, whether or not the applicant is willing to pay a charge
- if the Council chooses to deal with a request exceeding the 'appropriate limit' and apply a charge, this will include the total hours, including those below the 'appropriate limit'
- if an EIR request exceeds £450 and the applicant is unwilling to bring their request under the 'appropriate limit' in the FOIA Fees Regulations, the applicant will be charged all the officer hours involved
- all Fees will be calculated on a standard hourly rate of £25 unless other legislation provides for an alternative rate to be charged
- VAT will be charged on any Fee if the information supplied is also held by a non public authority body but will not apply where the requested information is only available from the Council or another public authority
- disbursements amounting to £5.00 or more as set in paragraph 7, will be payable at the Council's discretion
- all Fees and charges applicable, will be estimated and payable in advance before the supply of information
- the date received is the date the payment has cleared

13. EXCEPTIONS

13.1 The Council may decide not to levy fees and/or charges where it is impracticable to apply them, or in cases of genuine hardship or need for information.

14. REVIEW

14.1 This policy is reviewed annually to take account of increases in postal charges, printing, or other costs.