

## Charging for information in a publication scheme

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs) provide rights of public access to information held by public authorities. This is part of a series of guidance notes produced to help public authorities understand their obligations and to promote good practice.

This guidance advises organisations on charges which can be made for information covered by a publication scheme.

### Overview

The Act requires public authorities to make it clear whether a charge is made for material which they routinely make available.

- The Fees Regulations do not apply to information that is routinely made available unlike information that is disclosed in response to a specific request.
- Where fees are charged they must be calculated separately from charges made under the Fees Regulations.
- The Act does not specify how these charges should be calculated. However any charge should be justified, clear and transparent.
- If a public authority does not make it clear in their guide to information that charges will be made for information then they will be unable to charge for it.

As a result authorities have the discretion to determine the level of charges. While there is no requirement for the Information Commissioner to approve specific charges, this guidance gives some general principles that should be applied to the level of charging.

### Clarity and transparency of charging

The ICO model publication scheme allows for fees to be charged where **it can be justified** and it requires these charges to be published. Also if a charge is to be made, the basis for the charge must be made clear.

Where a charge applies the public should be left in no doubt as to what the charge is for and the amount. A schedule of charges included in an authority's guide to information which is regularly updated will help to make this transparent.

- A schedule should provide details of all the different types of charge that may be made, such as any printing, copying or postage charges and also statutory charges that apply to any specific types of information.

#### Example:

HM Land Registry is able to charge for the supply of various categories of information, such as an official copy of a register or title plan, in accordance with the Land Registration Fee Order 2006.

Where commercial information (in general, publications made available on a commercial basis and subject to a cover charge, for example, guidebooks) is routinely made available and legal authority allows a charge to be made for this information, then these charges must be included in the schedule. This is because such charges need to be clear in order for the information to be considered as reasonably accessible to an applicant for the purposes of section 21 (3) of the Act. See [Awareness Guidance 6: Information Reasonably Accessible to the Applicant by Other Means](#) for further information on this exemption.

- A public authority must outline how such charges are calculated and do this so that someone can roughly work out the cost involved.

- If a public authority does not specify in their guide that charges will be made, then they will not be able to charge for this information.

There is no requirement to provide specific details of the charges in circumstances where a public authority is able to charge by means of a statutory charging regime. Good practice would be to make reference to the regime in their guide.

As the Environmental Information Regulations 2004 oblige public authorities to publish a schedule of their charges (Regulation 8 (8)(a)), this approach should be extended to information which is made available on a routine basis.

### **Level of charges**

The Act does not give public authorities the specific power to charge for information. This is because it was never the intention of the FOIA to provide public authorities with a way to profit from routinely releasing information. As a result the public authority should determine the extent of its powers to charge for information, by deciding a maximum amount they will charge.

We strongly recommend that the level of charges should be compatible with the principle of promoting public access to the information held by public authorities. While we cannot be prescriptive about the level of charges, we would expect a public authority to be able to justify them based on a transparent and publicly available charging policy or policies.

In making information available proactively an authority must consider the public interest in allowing access to the information. We will consider high levels of charges for routine information to be contrary to promoting public access to official information. Also information that is subject to high charges may not be considered as being reasonably accessible for the purposes of section 21 of the Act.

It is worth remembering that the public and the Information Commissioner will be easily able to compare different charging regimes across the public sector.

In practice, we expect that for much of the information which is routinely made available there will be either minimal or no cost. This will include information available from websites or supplied in hard copy form with any charges only being for the cost of any printing, copying or postage involved.

### **Examples of charges that are reasonable:**

#### **Printing, copying or postage**

- An authority can charge for these in order to recover costs. It is still expected that any charges will be in accordance with the authority's published charging policy and schedule of charges.

#### **Charges under statutory charging regimes**

- This will be self-explanatory to those authorities who can make such charges, but they should be made on a clear basis.

#### **'Commercial' publications**

This can cover a range of circumstances, such as:

- the need to charge in order to guarantee the continued collection and publication of the information;
- where information has been collected and analysed for commercial purposes and where this has required professional time and skill; and
- information which is normally made available on commercial terms as part of the authority's trading activities.

**Examples of charges that would not be considered to be reasonable:**

- Staff time - we would not expect to find this included in charges for information that an authority makes available to the public as part of its regular activities. (There is an exception where the authority is entitled to recover research fees for retrieving archived material.)
- Where the only justification for charges is that they have traditionally been made.

**Environmental information**

Environmental information which is regularly made available by electronic means (for example the information can be downloaded from a website) should be included in an authority's guide to routinely release information. This information should not be charged for.

Regulation 8 refers to the ability to charge a "reasonable amount" for the supply of environmental information. In practice this should not present any conflict with the charging policy connected to the wider proactive release of information. The requirement in Regulation 8 for public authorities to publish and make available a schedule of charges will complement the publishing of a schedule of fees for information which is routinely made available.

**More information**

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our current recommended approach to this area.

If you need any more information about this or any other aspect of freedom of information, please contact us.

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