Information Commissioner's Office

Charging for information in a publication scheme

Freedom of Information Act

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Introduction

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.

2. An overview of the main provisions of FOIA can be found in The Guide to Freedom of Information.

3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.

4. This guidance explains to public authorities the general principles that should be followed in setting charges for information made available in a publication scheme.

Overview

- 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.
- FOIA 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.

What FOIA says

5. Section 19 states:

> **19.**—(2) A publication scheme must—
>
> .....
>
> (c) specify whether the material is, or is intended to be,

available to the public free of charge or on payment.

(3) In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest—

(a) in allowing public access to information held by the authority,

6. FOIA therefore requires public authorities to make it clear whether a charge is made for material which they routinely make available.

7. However, as FOIA does not say how charges should be calculated, there is no requirement for the Information Commissioner to approve specific charges in a publication scheme. This means that authorities have the discretion to determine the level of charges.

Clarity and transparency of charging

8. 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.

9. 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.

10. 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.

11. 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 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 FOIA. See our guidance about information reasonably accessible to the applicant by other means for further information on this exemption.

12. A public authority must outline how charges are calculated and do this so that someone can roughly work out the cost involved. If a public authority does not specify in its guide that charges will be made, then it will not be able to charge for this information.

13. 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. However, good practice would be to make reference to the regime in its guide.

14. 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

15. The Act does not give public authorities the specific power to charge for information. This is because it was never the intention of 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 it will charge.

16. 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.

17. 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.

18. It is worth remembering that the public and the Information Commissioner will be easily able to compare different charging regimes across the public sector. We will also consider charges to be unreasonable where the only justification is that they have traditionally been made.

19. 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

Printing, copying or postage

20. 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

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

'Commercial' publications

22. 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.

Datasets

23. Under section 19(2A) of FOIA, an authority's publication scheme must include a requirement to publish any dataset that has been requested, and any updated version that it holds, unless the authority is satisfied that it is not appropriate to publish it. The authority is required to publish the dataset in a re-usable form, where reasonably practicable. If the information in the dataset is a relevant copyright work of which the authority is the only owner, then the authority is required to make it available for re-use under the terms of a specified licence.

24. The public authority may charge a fee for allowing re-use of a dataset. If the authority has a power to do this under an enactment other than FOIA, it may charge under that power. If not it may charge under the regulations made under section 11B of FOIA. Those regulations are the Freedom of Information (Release of Datasets for Re-use) (Fees) Regulations 2013 no. 1977; they set out how the public authority should calculate the re-use fee.

25. The fee for allowing the re-use of a dataset is in addition to the charges for making the information available, which are discussed above.

26. If a public authority is licensing the re-use of a dataset under the Open Government Licence, then there is no re-use fee.

27. There is a further explanation of the datasets provisions in FOIA in our guidance document on datasets.

Environmental information

28. 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 released information. This information should not be charged for.

29. 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 pro-active 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.

30. The Environmental Information Regulations do not include any provisions relating to the re-use of datasets. However, in a case where a public authority that is subject to FOIA has received a request for environmental information and it holds that information in the form of a dataset, then, as well as answering the request, it should consider whether it is appropriate to make the dataset available for re-use under its publication scheme as well. This is because under section 19(2A)(a) of FOIA the authority is required to make any dataset "in relation to which a person makes a request for information" available for re-use under its publication scheme, unless the authority is satisfied that it is not appropriate to do so.

31. If the authority is making a dataset of environmental information available for re-use under its publication scheme, then the provisions for charging for re-use described in the section on Datasets above also apply.

More information

32. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.

33. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

34. If you need any more information about this or any other aspect of freedom of information, please contact us: see our website www.ico.org.uk.