

Fees that may be charged when the cost of compliance does not exceed the appropriate limit

Freedom of Information Act

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

An overview of the main provisions of FOIA can be found in [the Guide to freedom of information.](#)

This is part of a series of guidance, which goes into more detail than the Guide to freedom of information, to help you as a public authority to fully understand your obligations, as well as promoting good practice.

This guidance explains to public authorities what fees they may charge where the cost of compliance with a request does not exceed the appropriate limit.

Overview

Where it would not exceed the appropriate limit to comply with a request, and a public authority wishes to charge a fee, it can only include the charges it reasonably expects to incur in:

- Informing the requestor whether it holds the requested information (even if the information will not be provided), and
- Communicating that information to the requestor.

This generally means that a public authority can only charge for expenses actually incurred, for example, photocopying or postage.

It must issue a fees notice advising the requestor of the amount it will charge.

The amount that a public authority may charge depends on whether or not the cost of complying with the request has exceeded the appropriate limit.

- For further information on the appropriate limit
⇒ see Requests where the cost of compliance with a request exceeds the appropriate limit

Where the estimated costs of complying with a request would not exceed the appropriate limit, then a public authority must comply with the request unless an exemption applies. However, a public authority can charge for complying with the request. The amount that the public authority can charge is determined by section 9 of the Act.

What FOIA says

Section 9(1) – (5) are as follows:

9. — (1) A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a “fees notice”) stating that a fee of an amount specified in the notice is to

be charged by the authority for complying with section 1(1).

9. — (2) Where a fees notice has been given to the applicant, the public authority is not obliged to comply with section 1(1) unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant.

9. — (3) Subject to subsection (5), any fee under this section must be determined by the public authority in accordance with regulations made by the Secretary of State.

9. — (4) Regulations under subsection (3) may, in particular, provide –

- (a) that no fee is to be payable in prescribed cases,
- (b) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and
- (c) that any fee is to be calculated in such a manner as may be prescribed by the regulations.

9. — (5) Subsection (3) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information.

The relevant Regulations referred to in section 9 are The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 SI No. 3244 (known as the Fees Regulations for brevity).

Regulation 6(2) of the Fees Regulations provides that a public authority can charge for the costs it reasonably expects to incur in:

- Informing the requestor whether it holds the requested information (even if the information will not be provided), and
- Communicating that information to the requestor.

A public authority that wishes to charge such costs should send the requestor a fees notice. This notice must state the amount the public authority will charge and should also advise the requestor how they can pay.

What can be charged when the costs of compliance do not exceed the appropriate limit

Regulation 6(3) states that this includes, but is not limited to, the costs of:

- Reproducing any document containing the information, eg printing or photocopying;
- Postage and other forms of transmitting the information; and
- Complying with section 11 of FOIA where the applicant has expressed a preference for the means of communication and where this is reasonably practicable.

These costs are referred to as 'communication costs' or disbursements and are limited to expenses actually incurred.

However, public authorities should note that regulation 6(4) prevents a public authority from charging for staff time (either its own staff or contractors) in carrying out these activities. This means that they should not include staff time as a disbursement even where they would consider it as an 'administration' or 'handling' fee.

Practical points

A public authority can only charge for the costs it would incur in disclosing the information if the fee were paid. In other words, a public authority cannot charge the requestor a fee and then, when it receives payment, state that the information cannot be disclosed because an exemption applies.

As a matter of good practice, if the administration costs of collecting a fee would be more than the charge itself, public authorities should waive the charge.

If the actual cost of answering a request is higher than the fee specified in the fees notice, the authority should not issue a second notice and instead must bear the additional cost itself.

However, if the actual costs are lower than those specified in the fees notice, we recommended as a matter of good practice that the public authority refunds the excess amount.

Items which **cannot** be included in the fee:

- A public authority should not charge for providing the information in a particular format where it is already subject to a statutory obligation to do so.

For example, a public authority should not charge for the costs of translating information into Welsh where it is already required to do so under the Welsh Language Act 1993.

Similarly, a public authority cannot charge for the costs of putting the requested information into an alternative format, for example, Braille, large print or on an audio tape, if this reformatting is required to meet the requirement to make reasonable adjustments for disabled persons in accordance with the Equalities Act 2010.

This should not be confused with the costs of complying with a preferred means of communication for the purposes of section 11 which can be charged for – see regulation 6(3).

- A public authority cannot take into account the time taken by staff in removing any exempt information.

Items which **can** be included in the fee:

- A public authority can include the costs of physically redacting exempt information. This could include the costs of materials, (for example, tape or black ink) or the use of specialist equipment (for example, rental or licensing) for the specific activity of redaction.

Example

An applicant requests information from a local authority which will cost £375 to locate, retrieve and extract the requested information. The public authority issues a fees notice for £405.

This fee is made up of:

- (i) photocopying 200 sheets @ 10p per sheet totalling £20;
- (ii) postage @ £10 and;

(iii) costs of locating, retrieving and extracting the information - £375.

Outcome:

As the costs of locating, retrieving and extracting the information are below the appropriate limit of £450, the public authority must deal with the request.

However, the public authority cannot charge for the time taken to locate, retrieve and extract the information. It is able to charge £30 (£20 photocopying and £10 postage) for communicating the information and the public authority therefore needs to issue a fees notice for £30 in accordance with section 9.

VAT

Whether or not the public authority can charge VAT depends on whether the information is only available from the public authority (or another public authority). If the requested information is only available from a public authority, any charges would not attract VAT.

However, if the requested information is available from another source that is not a public authority, the public authority may add VAT to its fee.

Timescales

The public authority must issue the fees notice within the 20 working day period for responding to the request. As a matter of good practice, we recommend that it issues the fees notice as soon as possible after it receives the request.

Section 10(2) of the FOIA states that the time for compliance should not include the period beginning with the day on which the public authority gives the fees notice to the applicant and ending with the day on which it receives the fee.

Example

An applicant makes a request on 1 July. The public authority issues a fees notice on 9 July. The applicant pays the fee on July 15.

The public authority has used 6 of the 20 working days allowed for a response and so it has 14 days after the day on which the applicant has paid the fee (or 14 days after the cheque has cleared) to respond to the request.

Payment

If a public authority does not receive payment within three months of issuing a fees notice, it is no longer obliged to respond to the request. The public authority should tell the requestor about the deadline in its fees notice.

When a requestor pays by cheque, the public authority may choose to regard the fee as being received on the day the cheque is received, or it may wait until the cheque has cleared. However, the public authority should not delay paying the cheque into its bank account in order to delay providing the response.

A public authority should also note that the section 45 Code of Practice states that where a requestor has indicated that he or she is not prepared to pay the fee, the authority should consider whether it can release any relevant information without charge.

Alternative means of obtaining the requested information

Section 9(5) of the FOIA recognises that some public authorities are able to charge fees for supplying information on another statutory basis. In such cases, the Fees Regulations will not apply and the public authority is able to charge in accordance with the alternative regime even if this charge would exceed the charge that could be made under the Fees Regulations.

For example, the National Archives is able to charge a search fee, and other fees, for supplying information in various formats (as well as other services) under the Public Record Office Fees Order.

In some cases, the application of an alternative charge by virtue of another piece of legislation may also indicate that a separate access regime, distinct from FOIA, exists for that particular type of information. The FOIA should not circumvent other access regimes and a public authority may wish to consider whether section 21 is applicable.

Additional guidance is also available if you need further information on:

- Section 21
⇒ see ["Information reasonably accessible to the applicant by other means"](#)
- Charging for information in a publication scheme
⇒ see ["How much can we charge for information?"](#)
- Charging for environmental information
⇒ see ["Charging for environmental information"](#)

Datasets

FOIA contains provisions dealing with fees for the re-use of datasets. A dataset is a collection of factual raw data, in electronic form, that a public authority gathers in the course of providing services and delivering its functions. If a public authority is providing information in response to a request, and it holds that information as a dataset, and the requester wants an electronic copy, then the public authority must provide the dataset in a re-usable form so far as reasonably practicable.

If the dataset is covered by the Re-use of Public Sector Information Regulations 2015 (RPSI), then licensing the dataset for re-use, and any charges for allowing re-use, must be dealt with under the terms of RPSI. If it is not covered (for example because the public authority is not a public sector body for the purposes of RPSI), then licensing and re-use are dealt with under the terms of the dataset provisions in FOIA.

Any fee for allowing the re-use of a dataset is in addition to any charge that the public authority makes (under section 9 of FOIA and the Fees Regulations) for communicating the information. If the public authority is also issuing a fees notice under section 9(1) of FOIA, it can combine this with the re-use fees notice but it cannot 'double-charge' for the same activities.

If the public authority is making the dataset available for re-use under the Open Government Licence, there is no fee.

For further information on datasets and re-use, see our [guidance document on datasets](#) and our [Guide to RPSI](#).

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.

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

If you need any more information about this or any other aspect of freedom of information or data protection, please [Contact us: see our website \[www.ico.gov.uk\]\(http://www.ico.gov.uk\)](#)