

Freedom of Information Act 2000

Using the Fees Regulations

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) give 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 explains the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) and how to apply them. It highlights the main principles that must be followed and gives some examples.

Overview

- Section 9 of the FOIA allows a public authority to charge a fee for providing information in response to a request.
- Such a fee must be determined in accordance with the Fees Regulations.
- Under section 12 of the FOIA a public authority does not have to comply with a request for information if the cost of compliance exceeds the appropriate limit.
- As well as explaining the appropriate limit, the Fees Regulations cover charging for information when the limit is not exceeded, charging for information when the limit is exceeded, and aggregation of requests.
- The Fees Regulations do not apply where a public authority is able to charge for the disclosure of information under any other statutory provision.

The appropriate limit

Section 12 of the FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit. The appropriate limit is the key concept concerning fees.

The Fees Regulations state that this cost limit is £600 for central government, legislative bodies and the armed forces (ie Part 1 of Schedule 1 of the FOIA) and £450 for all other public authorities.

A public authority must still confirm or deny whether it holds the information requested unless the cost of this alone would exceed the appropriate limit.

Assessing whether or not the appropriate limit is exceeded

In estimating whether complying with a request would exceed the appropriate limit, Regulation 4 (3) states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

An authority can take into account the costs attributable to the time that persons (both the authority's staff and external contractors) are expected to spend on these activities. Such costs are calculated at £25 per hour per person for all authorities regardless of the actual cost or rate of pay, which means that the limit will be exceeded if these activities exceed 24 hours for central government, legislative bodies and the armed forces, and 18 hours for all other authorities.

NB The figures of £450 and £600 relate only to the appropriate limit; they do not relate to the fees that may be charged.

Estimate

Section 12 makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required.

The estimate must, though, be **reasonable** as confirmed by the Information Tribunal in [Urmenyi v Information Commissioner and London Borough of Sutton \(EA/2006/0093; 13 July 2007\)](#) and can only be based on the four activities listed above.

What amounts to a reasonable estimate can only be considered on a case by case basis. This was confirmed in the case of [Randall v](#)

[Information Commissioner and Medicines and Healthcare Products Regulatory Agency \(EA/2006/0004; 30 October 2007\)](#) where the Information Tribunal found the estimate to be reasonable as it was “sensible, realistic and supported by cogent evidence”.

Where a reasonable estimate has been made that the appropriate limit would be exceeded, there is no requirement for a public authority to undertake work up to the limit.

The Information Commissioner can investigate the way in which an estimate has been arrived at, and, if he considers it to be unreasonable, he can substitute his own reasonable estimate.

Search - There may be instances (as in the case of [Quinn v Information Commissioner and the Home Office \(EA/2006/0010; 15 November 2006\)](#)) where the search for the information alone will exceed the appropriate limit. This case also confirmed that there is no requirement for an estimate to be provided before the search is commenced; indeed it will often be necessary to commence the search before an estimate can be provided. It is also possible for a public authority, without providing an initial estimate, to search up to the appropriate limit and then refuse to continue the search.

Exempt information - Once the documentation containing the information has been located and retrieved, a public authority cannot take into account the time taken, or likely to be taken, to consider whether any of the requested information is exempt. Nor can it take into account the time taken, or likely to be taken, to remove the exempt information in order to leave the information that is to be disclosed in response to the request. The activity “extracting the information from a document containing it” refers to the extraction of the information that has been requested out of a document which contains other information, **not** to the extraction of exempt material from the information that has been requested (known as redaction). This was confirmed by the Information Tribunal in the case of [The Chief Constable of South Yorkshire Police v the Information Commissioner \[EA/2009/0029, 14 December 2009\]](#). The approach taken by the Tribunal and by the Commissioner was supported by the High Court on appeal [\[2011\]EWHC44 \(Admin\)](#). For further guidance, see the Information Commissioner’s guidance: [Redacting and Extracting Information](#).

Advice and assistance - Where an authority refuses a request because the appropriate limit has been exceeded, it should, bearing in mind the duty under section 16 of the FOIA to advise and assist an applicant, provide information on how the estimate has been arrived at and provide advice to the

applicant as to how the request could be refined or limited to come within the cost limit. (Also, see later section 'Appropriate limit exceeded'.)

Appropriate limit not reached: section 9 of the FOIA

Where the cost of compliance does not exceed the appropriate limit, unless an exemption applies the request must be complied with and the information released. Section 9 of the FOIA allows a public authority to charge a fee for complying with section 1(1) in these circumstances.

Regulation 6 of the Fees Regulations sets out the activities that can be charged for in complying with section 1(1) of the FOIA, but these are **different from** the activities used in the estimation of whether the appropriate limit has been reached under section 12 of the FOIA. A public authority can recover the reasonable costs incurred in:

- contacting the requester to inform them the information is held, and
- communicating the information to the requester.

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 FOIA section 11 where the applicant has expressed a preference for means of communication and where this is reasonably practicable.

The costs permitted to be charged by regulation 6 are referred to as 'communication costs'. They are sometimes called disbursements and are limited to expenses actually incurred. The cost of staff time taken to carry out these activities **cannot** be taken into account.

As stated above, the time taken to redact exempt information cannot be taken into account in estimating the appropriate limit. However, it is possible for the physical costs of redaction to be taken into account under regulation 6. These could include materials (eg tape) or use (rental, licensing) of specialist equipment for that specific activity.

Example 1

An applicant requests information from a local authority that will cost £425 to locate and retrieve. Communication costs are £50.

Outcome: The appropriate limit of £450 is not exceeded, and so the authority must deal with the request. It is able to charge £50 for communication costs by issuing a fees notice under section 9 of the FOIA.

Appropriate limit exceeded

Where the estimated costs exceed the appropriate limit, the authority is not obliged to communicate the information to the applicant. There is, though, still an obligation to confirm or deny whether the information is held unless to do this would in itself exceed the appropriate limit.

There is no obligation to comply with the request up to the point at which the appropriate limit has been reached. However, public authorities should have regard to their duties under section 16 of the FOIA to provide advice and assistance to the applicant. Examples of the types of practices authorities might follow in order to comply with these duties are set out in Part II of the [Code of Practice](#) issued under section 45 of the FOIA. Paragraph 14 of the Code recommends that, where a public authority estimates that the cost of compliance would exceed the appropriate limit, it should: (i) Consider providing an indication of what, if any, information could be provided within the appropriate limit and/or, (ii) consider advising the applicant that a narrowed or refocused version of their request could be handled within the appropriate limit.

Even though there is no obligation to comply with a request when the appropriate limit is exceeded, there is provision under section 13 of the FOIA and regulation 7 of the Fees Regulations for an authority to communicate the information and charge a fee in such cases.

As in all cases, there is no obligation to charge fees, and the public authority may decide to provide the information free of charge.

Fees for providing information where the appropriate limit is exceeded: section 13 of the FOIA

The maximum fee that can be charged in such circumstances is prescribed in regulation 7 of the Fees Regulations, and is the sum of:

- the costs which a public authority may take into account in calculating that the appropriate limit was exceeded (as above); **and**
- the communication costs; **and**
- staff time, at £25 per hour per person, spent on the activities included under communication costs.

NB within the above, fees can be charged for determining whether information is held and for communicating this to the applicant. (This includes communicating whether or not information is held even if it will not be provided.)

Example 2

A central government department estimates that the cost of locating, retrieving and extracting the information will be £800. Communication costs will be £100 and this element of the work will take one member of staff four hours to complete.

Outcome: The appropriate limit is exceeded and so the authority is not obliged to supply the information. If it chooses to do so, the following charges may be made for the following activities:

Locating, retrieving and extracting the information	= £800
Communication cost	= £100
Staff time spent carrying out communication activities (4 hours at £25)	= £100
Total fee	= £1,000

Alternative legal power to charge for disclosing 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. For example, the National Archives is able to charge a search fee, and other fees, for the supply of information in various formats (as well as other services) on the basis of the Public Record Office Fees Order. A public authority that has an alternative statutory basis for charging will therefore calculate the fee it is able to charge in accordance with the alternative regime and inform the applicant accordingly, even if such a charge would be in excess of the fees which would apply under the Fees Regulations.

In some cases, the application of an alternative charge by virtue of enactment may also indicate that a separate access regime, distinct from the FOIA, exists for that particular type of information. The FOIA cannot circumvent other access regimes where it is appropriate for them to be applied. As such, an authority may wish to consider whether the information is exempt by virtue of section 21 of the FOIA as it is reasonably accessible elsewhere. See [Information Reasonably Accessible to the Applicant by Other Means: Awareness Guidance No. 6](#).

Aggregation of costs

The Fees Regulations state that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are:

- by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- for the same or similar information; and
- the subsequent request is received by the public authority within 60 working days of the previous request.

The intention of this provision is to prevent individuals or organisations evading the appropriate limit by dividing a request into smaller parts.

The following examples seek to cover most of the circumstances where aggregation will apply:

Example 3

An authority receives two requests from the same person for the same or similar information. The cost of complying with the requests, once aggregated, is calculated to be £800 and so will exceed the appropriate limit. The authority must inform the applicant of this and can either:

- refuse the requests on cost grounds (having first complied with the duty to provide advice and assistance in accordance with section 16 of the FOIA);
- provide the information and charge in accordance with the Fees Regulations (£800 plus communication costs); or
- provide the information and waive any fee.

Example 4

An authority receives a number of requests for the same or similar information from a group of individuals who appear to be acting together. Once aggregated, the cost of complying with the requests is calculated to exceed the appropriate limit and the applicants should be advised of this.

- The authority can refuse to deal with the requests on cost grounds (having first complied with the duty to provide advice and assistance in accordance with section 16 of the FOIA).
- If the authority decides to provide the information and recover costs, it should charge each individual only for the constituent part of their requests. It cannot charge the overall cost of the aggregated requests to each applicant.

Example 5

An authority, having answered a first request, receives a second request which qualifies for aggregation with the first. The authority is able to combine the costs of the two requests in order to calculate whether the appropriate limit is exceeded. If the limit is exceeded, the authority can refuse the second application. If it chooses to provide the information, it can only charge the constituent cost of the second request. It cannot charge the total cost of the aggregated requests. However, where the cost of the second request is less than the appropriate limit, the authority should explain to the applicant that the aggregated cost exceeds the appropriate limit, which allows a charge in line with section 13 of the FOIA to be made:

Request 1 – cost of complying = £300

Request 2 - cost of complying = £375

Total cost of complying = £675

Request 1 was answered and the authority was only able to charge communication costs. The requests can be aggregated which means that the appropriate limit is exceeded and so Request 2 can be refused. Should the authority decide to answer Request 2, it can charge the full amount of £375 plus communication costs.

If further requests for the same or similar information are made, they can also be aggregated provided they are received within 60 working days of at least one of the earlier requests.

If an authority regularly receives requests for the same or similar information, it should, as a matter of good practice, consider whether the information can be made available via its publication scheme.

Caution must be exercised when making a decision on the aggregation of requests. For example, the aggregated cost may only exceed the appropriate limit by a small amount in which case the authority may decide not to aggregate the requests.

Public authorities must consider the merits of each case when considering aggregation. In the event that an authority does aggregate requests, it should provide the applicant with the reasons for doing so.

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 general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

For more information please contact us.

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