

## Fees that may be charged when the cost of compliance exceeds 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 <https://ico.org.uk/for-organisations/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 exceeds the appropriate limit.

## Overview

Where it would exceed the appropriate limit to comply with a request, a public authority may charge the requestor for complying with the request. A public authority can charge for:

- the costs which may be taken into account in calculating whether the appropriate limit is exceeded; and
- the communication costs (including the costs of communicating whether or not the information is held even if it is not to be provided); and
- staff time spent on communicating the information.

## What FOIA says

Section 13(1) – (3) are as follows:

13. – (1) A public authority may charge for the communication of any information whose communication –

- (a) is not required by section 1(1) because the cost of complying with the request for information exceeds the amount which is the appropriate limit for the purposes of section 12(1) and (2), and
- (b) is not otherwise required by law

such fee as may be determined by the public authority in accordance with the regulations made by the Secretary of State.

13. – (2) Regulations under this section may, in particular, provide-

- (a) that any fee is not to exceed the maximum as may be

- specified in, or determined in accordance with the regulations, and
- (b) that any fee is to be calculated in such manner as may be prescribed by the regulations.

13. — (3) Subsection (1) 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 for the purposes of section 13 are The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 SI No. 3244 (known as the Fees Regulations for brevity).

## Charges that can be made where the appropriate limit is exceeded

Regulation 7 of the Fees Regulations allows a public authority that chooses to answer a request which exceeds the appropriate limit to charge for the total sum of the following:

- the costs which may be taken into account in calculating whether the appropriate limit is exceeded;
- the communication costs (including the costs of communicating whether or not the information is held even if it is not to be provided); and
- staff time spent on communicating the information.

### Calculating whether the appropriate limit is exceeded

Public authorities should refer to our guidance on the appropriate limit for further details on which activities can be taken into account in deciding whether the appropriate limit is exceeded.

Public authorities should note that any time taken in redacting any exempt information cannot be included in the estimate.

- For further information on the appropriate limit  
⇒ see [Requests where the cost of compliance with a request exceeds the appropriate limit](#)

## **Communication costs**

Public authorities can charge for the reasonable costs it expects to incur in:

- contacting the applicant to inform them the requested information is held (even if the information will not be provided), and
- communicating the information to the applicant.

This includes, but is not limited to, the costs of:

- reproducing any document containing the information e.g. printing or photocopying;
- postage and other forms of transmitting the information; and
- complying with section 11 FOIA where the applicant has expressed a preference for the means of communication and where this is reasonably practicable.

## **Redaction**

A public authority can charge for 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.

## **Format**

A public authority should not charge for providing the information in the requested 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).

## **Staff time**

A public authority can charge for the time taken by its staff on the activities included in communicating the information.

Regulation 7(5) indicates that staff time is to be charged at the flat rate of £25 per hour, irrespective of whether a higher rate is actually incurred by internal staff or charged by external contractor staff.

A public authority can also charge for the time it takes a member of staff to actually redact the exempt information. This cost can be included because it is part of the costs of communicating the information under regulation 7. Regulation 7(5) of the Fees Regulations confirms that a public authority can only charge £25 per hour for this activity. For example, if it takes one employee 45 minutes to black out the information which is not to be disclosed then the public authority can charge £18.75 for this activity.

For the avoidance of doubt, any staff time spent redacting exempt information cannot be taken into account when initially estimating whether it would exceed the appropriate limit to comply with the request.

## **Practical points**

### **Alternative means of obtaining the requested information**

Section 13(3) 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 the supply of 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. 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"](#)

## **Fees Notices**

If it would exceed the appropriate limit to comply with a request, a public authority is not obliged to comply with it. The authority should however issue a refusal notice stating that it is relying on section 12.

As a matter of good practice, if a public authority is offering to provide the information for a fee then it should issue a fees notice. There is no statutory requirement to do this, because there is no obligation on the authority to comply with a request when section 12 applies. However, it will normally be the easiest way of letting the requestor know that they have the option of receiving information upon payment of a fee.

As a matter of good practice a public authority should also aim to provide a fees notice as soon as possible and at least within the 20 working day period for responding to the request.

## **Payment**

The Commissioner is likely to follow the same approach as set out in section 9 in relation to payment of the fee. Accordingly, if a public authority does not receive payment within three months of issuing a

fees notice, the Commissioner would consider that it is no longer obliged to respond to the request. It is helpful to refer to this deadline in the fees notice.

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 there is any information which may be of interest that is available without charge.

## **VAT**

Whether or not VAT can be charged depends on whether the information is only available from any 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, VAT can then be added to the fees to be charged.

This is the position irrespective of whether or not it would exceed the appropriate limit to comply with the request.

## **Case example**

### **Example**

A central government department estimates that the cost of locating, retrieving and extracting information will be £800.

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:

(1) The costs which may be taken into account in calculating whether the appropriate limit is exceeded e.g. locating, retrieving and extracting the information = £800

(2) The communication costs = £25

(3) Staff time spent on communicating the information (1 hour @ £25 per hour) = £25

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Total fee payable by the requestor = £850

## 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 under the FOIA dataset provisions is in addition to any charge that the public authority makes (under section 13 of FOIA and regulation 7 of the Fees Regulations) for communicating the information. If the public authority is also issuing a fees notice for communicating the information, 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](#)