

# AUDIT SCOTLAND

## Policy on Charging for the Provision of Information under *The Freedom of Information (Scotland) Act 2002*

---

### 1. **Our General Policy**

Audit Scotland will **normally** provide **free of charge** information requested under *The Freedom of Information (Scotland) Act 2002* ("The Act") to anyone or any organisation requesting this information.

We do however reserve the right to charge for information requested under The Act and our approach to such charging is set out under 3 below.

We do not charge for information downloaded directly from our website, for a single printed copy of this information, or for providing this information to you by e-mail, floppy disk or CD. We do not charge for our reports.

### 2. **Requests for information in alternative formats**

We shall try to provide information in alternative formats and/or languages as requested. Your needs can be discussed by contacting us.

Electronic files of our reports are available on our website. They are provided as pdf files, and as of December 2004, we will also be providing them as rtf (text) files.

### 3. **The Code of Practice on Charging for Information**

The Code of Practice on the Discharge of Functions by Public Bodies under The Act provides, amongst other matters, ***Guidance on Charging Fees for providing information***. The relevant section of this Code of Practice is reproduced as an *Annex* to this policy statement for your information.

We will not normally charge for information provided under The Act. We do however reserve the right to make charges for information in accordance with the Code of Practice in cases where, in our opinion, individuals or organisations make requests for information that are either excessive or unreasonable in their volume or frequency. If charges are to be made you will be told at the time of your request and these charges would be payable in advance.

## FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

### GUIDANCE TO SCOTTISH PUBLIC AUTHORITIES ON CHARGING FEES FOR PROVIDING INFORMATION.

The fees Regulations apply only to formal requests for information under section 1(1) of the Act. They do not apply to any charges for documents available through publication schemes, such as priced publications.

#### Background

1. Sections 9, 12 and 13 of the Freedom of Information (Scotland) Act 2002 (the Act) allow the Scottish Ministers to make Regulations enabling Scottish public authorities to charge for providing information. Charging under FOI is not compulsory. Much of the information which authorities will make available will fall below the level for incurring a fee and, in practice, will be made available free of charge. While the fees regime is not intended to permit full cost recovery, authorities should bear in mind that many applicants may be on low incomes. In line with their general responsibilities to provide advice and assistance, authorities should consider how best to provide the information in the most cost effective way.
2. The Regulations set out the legal framework that Scottish public authorities must comply with when they are charging for information under the Act. This guidance sets out how authorities should interpret the Regulations and should be carefully followed by authorities when charges are to be applied.

#### The Regulations and what they do.

3. There are two Statutory Instruments covering the fees regime:-
    - (a) The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the sections 9 and 12 Regulations); and
    - (b) The Freedom of Information (Fees for disclosure under Section 13) (Scotland) Regulations 2004 (the section 13 Regulations).
- (a) The first and more important instrument covers the fees structure where a Scottish public authority receives a request for information under the FOI Act and is obliged to comply with it. It sets out the maximum concessionary rates that an authority can charge those who request information, if indeed the authority chooses to charge at all. However, a cap is placed on costs in that the authority is relieved of the obligation to comply at all with the request for information if projected costs are above an amount specified by Scottish Ministers. This is referred to in the Regulations as the prescribed amount and is currently £600.
  - (b) The second instrument covers the fee structure where a Scottish public authority receives a request for information under the FOI Act but is not obliged to comply with it because the costs of providing the information are projected to exceed £600 (the prescribed amount). In such a situation the authority may, nevertheless, be willing to comply with the request and the Regulations set out the provisions for doing that. If it complies, the authority is again restricted to charging at the concessionary rates for projected costs up to £600 (i.e. what it would have charged had the projected costs not exceeded the cap of £600). For the projected costs above the £600, the authority may recoup all those costs, bearing in mind that staff time remains subject to the maximum rate of £15 per hour.

### Concessionary Rates

4. In terms of the charging structure, the authority works out the projected costs of complying with the request. If the request is to be complied with, either because the projected costs will be below £600, or because the authority is willing to comply despite the projected costs overrunning the £600 cap, the first £600 of costs are scaled down as regards the figure recoverable from the applicant, as follows.

- The first £100 of costs are provided free of charge. (Regulation 4(2) of the sections 9 and 12 Regulations).
- Where projected costs include the cost of staff time in locating and retrieving the information, the cost of staff time is not to exceed £15 per hour for each member of staff engaged on the task. (Regulation 3(b)). This is a maximum rather than a standard rate to be applied in every case, particularly where staff costs prove to be lower.
- For projected costs above £100, authorities may make a charge of 10% of those costs up to the prescribed amount (Regulation 4(3)).
- The prescribed amount is £600. Authorities may charge for provision of information above that limit based on concessionary recovery (as set out above) up to £600 and full recovery of amount by which the projected costs exceed £600 - but are not obliged to do so (Regulation 4 of the section 13 Regulations).

### Projected Costs

5. The reason for having projected rather than actual costs as the lynchpin of the charging structure is to provide maximum flexibility for both the person requesting the information and the authority providing it. Via the fees notice the authority offers the applicant a binding quote based on how much it estimates the work will cost. If the applicant does not want to proceed with the request they may decline the quote. By proceeding in this way the authority will avoid abortive work being carried out where applicants subsequently decide they do not wish to proceed with the request for information.

6. Projected costs have to be a reasonable estimate of the costs likely to be incurred and based only on the estimated actual costs to the public authority. This will include direct outlays like postage and the cost of paper. If the cost to the authority for photocopying material is 10 pence per A4 sheet, it would be unacceptable to include a greater charge for this element in estimating the fee. Charges for storage media on which information may be provided (e.g. CDs) should not exceed the purchase price of the materials themselves. Projected costs will also include reasonably attributable overheads such as the managerial or supervisory costs (indirect costs) of responding to an FOI request. However, from the applicant's point of view, there is a safeguard built in, insofar as staff time, including for supervisory or management staff, cannot be charged out at more than £15 per hour. Charges for a person's time should not be rounded up to the hour, but expressed as a fraction of an hour if only a fraction is worked.

7. The fee may not be increased if the actual costs of locating and retrieving the information and then supplying it turn out to exceed the level originally estimated. There may be occasions when actual costs fall below the original estimate. In these circumstances, the authority should consider issuing a refund of any overpayment. Authorities will also need to be prepared to justify the level of fee if subsequently required to do so by the applicant or ultimately by the Scottish Information Commissioner. For these reasons, authorities should ensure that their estimated charges are based on reasonable assumptions about the resources likely to be required to comply with a request.

8. The fees notice itself should include advice about the authority's procedure for dealing with complaints about its handling of requests and also about the rights of appeal conferred by sections 20 (1) and 47 (1) of the Act.

**Authorities may charge for:**

- direct and/or indirect costs incurred in locating, retrieving, and providing the information in accordance with the Act; (Regulation 3(1))
- giving effect to a preference expressed by the applicant for receiving the information. Applicants may express such a preference as to the format in which the information is presented to them under section 11 of the Act and authorities should give effect to that so far as it is reasonably practicable to do so.

**Authorities may not charge for:**

- any costs incurred in determining
  - (a) whether an authority actually holds the information, and
  - (b) any costs incurred deliberating about whether or not to provide the information; (Regulation 3(2))
- any costs likely to be incurred by the authority in fulfilling any duty under or by virtue of s21 of the Disability Discrimination Act 1995 in giving effect to the means by which an applicant wishes to receive the information. (section 11(5) of the Act)

**Example 1**

The authority estimates that locating and retrieving the information will take 2 members of staff 4 hours to complete.

Actual cost of staff time: £8.50 per hour x 4	= £34
£14.00 per hour x 4	= £56
Photocopying: 50 x A4 sheets at 10p per sheet	= £5
	<b>=£95</b>

**The information will be provided to the applicant at no charge as the total falls below £100.**

**Example 2**

The authority estimates that locating and retrieving all the information will take the same two members of staff two full days to complete.

Actual cost of staff time: £8.50 per hour x 15	= £127.50
£14.00 per hour x 15	= £210.00
Cost of converting info into tape for an applicant with sight impairment £50	= £0
	<b>= £337.50</b>

**The charge to the applicant will be: £337.50 minus £100 = £237.50**

**£237.50 x 10% = £23.75**

### **Non-payment of fee**

9. Section 9 of the Act provides that if the authority has issued a fees notice to the applicant, it is not obliged to provide the information unless the fee is paid. The fee should be paid within 3 months of the fees notice being issued. Where the fee is not paid within the three month period, authorities will be entitled to treat the request for information as withdrawn, but should write to the applicant confirming that.

### **Aggregation of Costs**

10. Regulation 6 addresses the aggregation of costs where an authority receives two or more requests from different persons which cover the same subject matter or which significantly overlap. In such cases, where the estimated aggregated costs of complying with the requests exceed the prescribed limit of £600, the authority is not required to comply with each individual request providing it makes the information available to the public at large.

11. Where, in such cases, the authority elects to make the information widely available to the public rather than responding to the individual requests, the authority is still obliged to act within the statutory time scale. That is, the authority must either respond to the individual requests or publish the information and inform each applicant of where the information can be found, and they must do this within 20 working days of receiving the first request.

12. How this information is made available to the public will be a matter for the authority. One method would be to provide this information electronically via the authority's website and supply each applicant with a link. However, supplying an electronic link will not be appropriate in every case and authorities may have to provide hard copy in instances where applicants do not have access to the internet.

### **Section 27 Exemption. Information intended for future publication**

13. Authorities should note that if their decision to publish information is taken after or in the light of receipt of the first of the two or more requests which they are aggregating, then they must publish the information within 20 days (Regulation 6(d)). Such information cannot attract the exemption at section 27 and therefore be published within the longer timescale of 12 weeks. (This is because section 27 requires the information to be already held with a view to imminent publication at the time the request is received (see section 27(1)(b))).

### **Projected costs which exceed the prescribed amount**

14. Although under no obligation to comply with a request for information which would exceed £600, an authority should consider what information could be released free of charge or below the prescribed amount, particularly in circumstances where it is apparent that the applicant has a low income or is in receipt of state benefits. Alternatively, an authority can decide to provide the information anyway and can make a charge for doing so. The fee payable is set out in Regulation 4 of the section 13 Regulations.

The example below sets out how the costs are derived in these circumstances.

**Example 3**

An authority receives a complex request and estimates that it will take 3 members of staff varying lengths of time to locate and retrieve the information. This will take the estimated cost limit over the upper cost. Where an authority is prepared to supply all the information sought the estimate will be calculated as follows:

Actual cost of staff time: £8.50 per hour x 20	= £170
£14.00 per hour x 25	= £350
£15.00 per hour x 10	= £150
Photocopying 200 x A4 paper @ 10p	= £20
	<b>= £690</b>

**The charge to the applicant will be:**

First £100	= Free
10% of £500	= £50
Costs over £600	= £90
	<b>= £140.</b>

**VAT**

15. Authorities should note that VAT should not be added to the estimated costs.