

# Southampton City Council

## Information Access and Use: Policy on Fees and Charges

### January 2019



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## 1. Introduction

1.1 This policy forms part of the Information Governance and Risk Framework, and details how and when the Council will charge members of the public for responding to requests for information.

## 2. Scope and Purpose

2.1 This policy applies to information requests falling under Section 1(1) of the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) and Subject Access Requests for and access requests for personal information and personal 'unstructured' manual information under Article 15 of the General Data Protection Regulation (GDPR).

2.2 This policy does not apply to information which is otherwise available either:

- under statute, or
- through the [Council's Publication Scheme](#)<sup>1</sup>

2.3 The FOIA is intended to build on existing access channels, rather than replace existing access regimes. Therefore, where information is reasonably accessible to applicants through other means, it is exempt from FOIA. Where information is otherwise available, this means that the rules for costing and charging for compliance with the Act do not apply.

2.4 However, specific legislation and/or the Publication Scheme may provide for a charge and/or the costs of supplying information. Examples of charges excluded from the scope of this policy are:

- Part VI of the Representation of the People (England & Wales) (Amendment) Regulations (SI 2002/871) authorising the supply of the edited electoral register to credit reference agencies on payment of a fee;
- Fees applicable for information available via the Publication Scheme (denoted in the scheme by a £ sign); and
- Costs of communicating information available in the Publication Scheme where this is not available online.

## 3. Fees Regulations

3.1 Under Section 12 of the FOIA, a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the 'appropriate limit' prescribed in Regulations.

3.2 Article 12(5) of the GDPR states that, where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested; or refuse to act on the request.

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<sup>1</sup> <http://www.southampton.gov.uk/council-democracy/council-data/freedom-of-information/publication-scheme/default.aspx>

3.3 Article 15(3) of the GDPR states that a data controller may charge a reasonable fee based on administrative costs for providing a further copy of any information disclosed

3.4 The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004/3244) govern the 'appropriate limit' and the fees that can be charged for the above types of information requests.

3.5 There is no 'appropriate limit' for EIR requests. However, Regulation 8 of the EIR 2004 provides for the recovery of 'reasonable' costs.

## 4. The 'Appropriate Limit'

4.1 Under Regulation 4 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (hereafter referred to as the FOIA Fees Regulations), the 'appropriate limit' is set at £450 (£600 for central government and Parliament).

4.2 The 'appropriate limit' is calculated on a standard rate of £25 per hour based on estimating how long it takes to:

- Determine if the information is held
- Locate the information or a document which may contain the information<sup>2</sup>
- Retrieve the information, or a document, which may contain the information
- Edit or extract the releasable information contained within a document

4.3 This calculation does not take into account the time spent/costs of:

- checking that a request for information meets the requirements of FOIA
- locating information due to poor records management practice, and
- considering the application of exemptions; prejudice and/or public interest tests;
- obtaining internal or external legal advice
- considering whether a request is vexatious or repetitive
- obtaining authorisation to send out information
- calculating any fee to be charged; or
- providing advice and assistance under section 16 of FOIA

4.4 Based on the standard hourly rate of £25 specified in the FOIA Fees Regulations, the maximum time spent finding, retrieving, collating, and editing before exceeding the £450 cost limit is 18 hours.

4.5 In accordance with the FOIA Fees Regulations, information requests which do not involve more than 18 hours to answer will be processed without charging a fee.

4.6 Public authorities are not obliged to respond to a request where it is estimated the cost of complying exceeds 18 hours (i.e. £450) and are entitled to:

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<sup>2</sup> This can include the first time an individual working in the authority reads information to establish what is contained within a file or document, although any subsequent readings (e.g. to consider exemptions), or if the information is passed to others to read, should not be included.

- decline requests exceeding this amount; or
- charge a permitted fee to answer them fully

4.7 The actual costs of communicating information released to the applicant are recoverable. This includes the cost of printing, photocopying, postage and/or supplying the information in a particular form. These are 'disbursement costs' which are detailed in section 7 of this policy.

## 5. Estimating the Cost of an Information Request

### *FOIA Information Requests*

5.1 The Council is committed to ensuring that the benefit of increased information rights is applied equitably, irrespective of ability to pay. Rather than routinely charging fees whenever the cost limit is exceeded, it is the Council's policy to offer advice and assistance to applicants to ensure requests are brought within the cost limit and dealt with free of charge.

5.2 In determining whether the 'appropriate limit' is exceeded, the cost of processing the request and communicating the information may be estimated in advance.

5.3 If it is estimated that a request will take less than 18 hours to complete and there is no reason to withhold the information, the request will be dealt with free of charge (save any costs which may apply under sections 6, 8, 11 and/or 12 of this policy).

5.4 If it is estimated that a request will take more than 18 hours to complete, applicants will be assisted to narrow the scope of the request.

5.5 If an applicant does not accept advice and assistance and the cost continues to exceed the 'appropriate limit', the Council:

- may exercise discretion to supply some information up to this limit;
- is not obliged to comply with the request and will normally refuse requests exceeding this Limit;
- may answer the request and may charge a fee in accordance with [the Information Commissioner's guidance](#)<sup>3</sup>.

5.6 If the 'appropriate limit' is exceeded, and the Council decides to answer the request by applying a charge, the Fee will be based on a standard rate of £25 per hour in line with power under section 13 of FOIA, unless the Council has a power under other legislation to charge an alternative rate.

5.7 The Fee will be based on the total chargeable hours, including the hours up to the 'appropriate limit' in line with the FOIA Fees Regulations and the Information Commissioner's guidance.

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<sup>3</sup> [https://ico.org.uk/media/for-organisations/documents/1635/fees\\_cost\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1635/fees_cost_of_compliance_exceeds_appropriate_limit.pdf)

5.8 Where a request costs more than the appropriate limit to answer, the requirements of section 1(1) and of those parts which depend on section 1(1) cease to apply, i.e. there is no legal requirement to:

- issue a Fees Notice [Section 9(1) FOIA];
- comply with the 20 working day time limit [Section 10(1) FOIA];
- provide information in preferred format [Section 11 (1) FOIA]

5.9 However, if the Council chooses to answer a request exceeding the 'appropriate limit', it will endeavour to follow the same principles in line with the Information Commissioner's guidance.

### *EIR Information Requests*

5.10 In the interests of consistency, rather than applying a 'reasonable charge', the Council has decided not to charge for EIR requests, provided the cost of the EIR request, does not exceed the 'appropriate limit' specified in the FOIA Fees Regulations.

5.11 If it is estimated that the EIR request will take less than 18 hours to complete, and there is no reason to withhold the information, the request will be dealt with free of charge (save any costs which may apply under sections 6, 8, 11 and/or 12 or this policy).

5.12 If it is estimated that a request will take more than 18 hours to complete, applicants will be assisted to make the request smaller.

5.13 If an applicant is not prepared to bring their request within the FOIA Fees limit, the option of paying the full estimated cost of processing the request will be given. The full cost will include the total hours involved calculated at the rate of £25 per hour, including a charge for all hours otherwise disregarded under section 5.10 of this policy.

5.14 Whilst there is no obligation to do so, the Council may exercise its discretion to supply some information, even if an applicant is not prepared to pay charges applicable under section 5.13 of this policy.

## 6. Aggregating Requests

6.1 In considering whether to refuse to answer multiple questions altogether on the grounds that they are repetitious or vexatious requests, the Council will take account of the [Information Commissioner's procedural guidance](#)<sup>4</sup>.

## 7. Communicating Information – Disbursement Costs

7.1 Irrespective of whether the request is below or above the 'appropriate limit', disbursements will normally be charged where the estimated total cost of communicating the information exceeds £5.00.

7.2 Under Section 11(1) of the FOIA, authorities have a duty to take account of the applicants preferred format for receiving information. This may include:

- summarising the information
- providing the applicant with a copy (i.e. photocopying or printing)
- allowing the applicant to inspect a record containing the information
- producing material in an applicant's preferred format (for example by putting it onto a CD-ROM, video or audio cassette) or
- translating information into a language other than English at the request of the applicant

7.3 No charges will be applied by the Council where the costs incurred arise from meeting our obligations under the Disability Discrimination Act 1995 (e.g. providing information in Braille or in large type).

7.4 In some circumstances the Council may waive the requirement to recover the costs of disbursement.

### *Postage and Printing Costs*

7.5 Applicants may be expected to meet the costs as set out below. The cost of an A4 black and white photocopy or printed sheet will be charged at 10p per sheet and postal costs will be based on current [Royal Mail costs](#)<sup>5</sup> (which will be subject to variation). Unless otherwise requested, items will be sent using Royal Mail's "Signed For" service, and weights are calculated on the basis that one sheet of A4 paper weighs 5 grams; prices for other paper sizes may vary.

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<sup>4</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/>

<sup>5</sup> <https://www.royalmail.com/current-postage-prices>

Example Charges:

Number of sheets of A4 paper	Charge At 10 pence per sheet	Postal Costs*		Total (Copying and Postal Costs)
		Weight	Charge	
50	£5.00	Large Letter 250g	£1.40	£6.40
100	£10.00	Large Letter 500g	£1.87	£11.87
200	£20.00	Small Parcel 1kg	£3.45	£23.45
400	£40.00	Small parcel 2kg	£5.50	£45.50

\*Postal rates are based on Royal Mail charges and may vary

7.6 Normally information supplied electronically will not involve a cost, unless hard copy information has been specifically converted for this purpose.

7.7 Other or additional costs (to postage and printing charges) incurred as a result of communicating information in a way requested by the applicant, where the overall amount exceeds £5.00, will be payable. This includes, but is not limited to, requests to supply information on CD/DVD Rom; another medium, or in a language other than English.

7.8 Costs of supplying information in other paper sizes, or on alternative media will be in line with those charged by [Southampton Archives Services](#)<sup>6</sup>, which are currently:

Reprographics	Present charge
Black & White photocopies – A3	45p
Colour copies – A4	£1.50
Colour copies – A3	£1.90
Print-outs from microfiche	60p
Digital images (scans/ photographs)	£2.70
Digital video or images on DVD/CD-ROM	£3.00

Search Fees and Certificates	Present charge
Copy certificates of baptism	£3.10 (if we search for entry)
Certified copies of Motor Vehicle Registration documents	£1.50
Certified copies from Electoral Registers	£4.00
Search of Central Index Register of Merchant Seamen	£15.00
General Research (anything beyond information on holdings or short, specific searches)	£35.00 per hour with a minimum charge of £17.00 for a 1/2 hour search and a maximum of 2 hours

<sup>6</sup> <http://www.southampton.gov.uk/libraries-museums/local-family-history/southampton-archives/research-service-charges.aspx>

## 8. Time Limits and Charging

- 8.1 The Council has 20 working days to respond to FOI/EIR requests and one calendar month to respond to subject access requests.
- 8.2 If disbursement costs apply for responding to a request under the 'appropriate limit', an estimated Fees Notice will be issued.
- 8.3 Once the Fees Notice has been issued, the clock stops and the applicant has three months to pay the charge. The request lapses after 3 months if the charge remains unpaid. Only when payment has been received and has cleared does the clock restart, and work begin on collating the information.
- 8.4 The Fees Notice will usually be issued before any costs are incurred in preparing to answer the request.
- 8.5 Although the Council is not legally compelled to do so, if it chooses to answer a request exceeding the cost limit:
  - it will normally issue a Fees Notice if charging a Fee
  - seek to provide the information in the format requested by the applicant
  - answer the request as quickly as it can

## 9. Refunds

- 9.1 If the actual cost of answering the request turns out to be greater than the estimated cost charged, the additional cost will be borne by the Council. There is no provision for another Fees Notice to be issued.
- 9.2 If the actual cost is lower than the amount charged, the Council will consider refunding the excess amount where this is greater than £5.00.
- 9.3 Care will be taken to ensure that estimated fees are as accurate as possible to prevent over or under charging.

## 10. Payment of Fees, Disbursements, and VAT

- 10.1 If a charge applies, the estimated fees and/or costs of supplying the information, will be payable in advance.
- 10.2 With regard to VAT, as the FOIA does not set a specific fee, any monies charged are not statutory fees.
- 10.3 Customs do not consider that information released under the Act constitutes an economic activity where the information could only be provided by a public authority. As such, any fees charged in these circumstances will be outside the scope of VAT. This means that no VAT should be added to the fees.

10.4 The key determining factor as to whether VAT is charged is whether the information is available from another source that is not a public authority. This distinction is made so as not to distort competition between the public and private sector.

10.5 In summary:

- If the Council is asked for information, and the information is only available from the Council or another public authority, any chargeable fees do not attract VAT.
- If the Council is asked for information that is available from another non-public authority source, any fees do attract VAT. (This is still the case even if the authority is obliged to supply the information because the cost of answering is below the appropriate limit, i.e. where the costs of similar requests may have been aggregated).

## 11. Copyright

11.1 Some of the information supplied under the FOIA will be subject to copyright protection under the Copyright, Designs and Patents Act 1998. Information can be re-used for the purposes of research for non-commercial purposes, for private study or for news reporting and review without requiring formal consent. However, if the applicant wishes to re-use the information for commercial purposes, including publishing s/he would require the permission of the copyright holder.

11.2 Failure to obtain permission may result in an infringement of the Copyright, Designs and Patents Act 1998. Permission to re-use copyright protected information owned by the Council may be granted in the form of a licence and the applicable charges will be advised on request. Permission to re-use information supplied by the Council which is copyright protected by another party, must be sought from the third party copyright holder.

## 12. CCTV Footage Requests

12.1 If an individual makes a request for CCTV footage of themselves, it will be processed as a Subject Access Request. Such requests will be processed under the GDPR, and no fee will be payable.

12.2 The Council may be unable to provide the footage under the subject access request provisions of the GDPR (e.g. because the footage contains the personal data of other individuals, and it would not be reasonable to disclose the footage in the circumstances).

12.3 In these circumstances, the Council may instead be able to provide the footage to insurance companies or legal advisors for the purposes of legal / judicial proceedings.

12.4 If a request for CCTV footage is made for the purposes of legal / judicial proceedings, a charge of £50.00 will be payable. The Council are under no obligation to disclose footage requested for this purpose, and, as such, this is a discretionary service. Section 93(1) of the Local Government Act 2003 permits charging for discretionary services.

12.5 If a request for CCTV footage is made for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties,

including the safeguarding against and the prevention of threats to public security, no fee will be payable.

## 13. Summary of Fees and Charging Policy

13.1 In respect of finding, locating, retrieving and extracting information and the disbursements incurred in answering information requests covered by this policy:

- there will be no charge for servicing an FOIA and/or EIR request requiring less than 18 hours (calculated in accordance with part 3 of this document) based on a standard hourly rate of £25;
- where the time is estimated to exceed 18 hours a FOIA applicant will be offered advice and assistance to bring the request within the cost limit of £450;
- the Council reserves the right not to comply with a FOIA request exceeding £450, whether or not the applicant is willing to pay a charge;
- if the Council chooses to deal with a request exceeding the 'appropriate limit' and apply a charge, this will include the total hours, including those below the 'appropriate limit';
- if an EIR request exceeds £450 and the applicant is unwilling to bring their request under the 'appropriate limit' in the FOIA Fees Regulations, the applicant will be charged all the officer hours involved;
- all Fees will be calculated on a standard hourly rate of £25 unless other legislation provides for an alternative rate to be charged;
- VAT will be charged on any Fee if the information supplied is also held by a non-public authority body but will not apply where the requested information is only available from the Council or another public authority;
- disbursements amounting to £5.00 or more as set in part 7 of this document, will be payable at the Council's discretion;
- all Fees and charges applicable, will be estimated and payable in advance before the supply of information;
- the date received is the date the payment has cleared.

## 14. Exceptions

14.1 The Council may decide not to levy fees and/or charges where it is impracticable to apply them, or in cases of genuine hardship or need for information.

## 15. Review

15.1 This policy will be reviewed annually to take account of increases in postal charges, printing, or other costs.