



SECTION 8

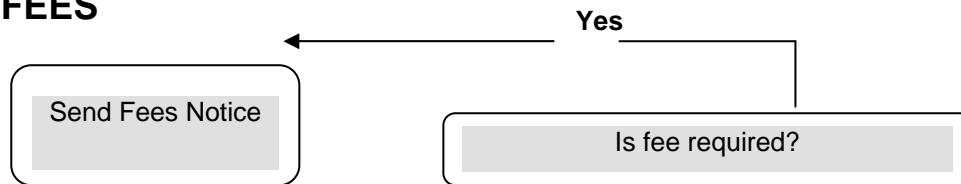
CHARGING FEES

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SECTION 8

CHARGING FEES



Key Points

- If the cost of producing the information would exceed the threshold of £450, you are not obliged to comply with the FOI request.
- A Fees Notice must be issued within 20 working days of receipt of the request.
- Once a Fees Notice has been issued, the clock stops ticking until you receive the fee.
- The 20 working day time limit resumes when you receive the fee.

8.1 Fees Regulations

This section of the Manual gives general guidance on charging fees under the Fees Regulations [Annex PQ] which are designed to enable people to obtain most information for just the costs of printing, photocopying and postage.

You do not need to provide information on request if it is otherwise reasonably accessible (refer to section 7 of this Manual). Where information is made available in accordance with the Council's Publication Scheme, it will always be regarded as being reasonably accessible, including where it is available only on payment.

An FOI request for information which is referred to as being exempt in the Publication Scheme, is subject to the rules and procedures detailed in this Manual, including those on costs and fees.

8.2 Publication Scheme Charges

The Council may include in its Publication Scheme, a list of standard fees and charges for the services it provides under the Scheme. These standard fees and charges continue to apply and fall outside the terms of the Fees Regulations.

If your Department is currently providing information in return for a fee, you must ensure that you have listed the information or classes of information in the Publication Scheme and the conditions under which the information will be provided.



8.3 Other charging powers

If the Council already has a legal power to charge, it can continue to rely on this existing power and as to what may be charged under the Fees Regulations, will not apply.

The Fees Regulations only apply when the Council does not have any greater power to charge for information.

8.4 The costs threshold

A threshold of £450 has been imposed for local authorities. Therefore, if producing the information would cost less than the threshold and there is no other basis on which the request may be refused or otherwise dealt with, you must answer the request. The maximum fee that can be charged in these circumstances, is limited to disbursements.

You may charge a lesser amount or make no charge (refer to section 8.15 of this Manual).

8.5 Calculating the cost (staff time) – the hourly rate

An hourly rate of £25 per person may be applied.

8.6 Disbursements [Annex R]

In calculating the costs of disbursements, you may take into account the following:

- (a) the cost of giving effect to the applicant's preference regarding the form in which the information is provided e.g. tape, disk, CD - ROM etc;
- (b) the costs of producing any document containing information requested e.g. photocopying and printing;
- (c) the costs of postage.

You cannot charge as disbursements, staff time involved in dealing with the request or the cost of considering possible exemptions.

Postage, photocopying, printing charges etc are agreed by the Council, annually, published and applied consistently across the organisation (see Fees and Charges on the Intranet).



8.7 Dealing with a request - general points to consider

In the majority of cases, it will be immediately obvious that the cost will not exceed the threshold of £450. You will therefore not need to estimate the cost of such requests in order to decide whether or not to reply.

You can only refuse to answer a request on the grounds of cost if it would cost more than £450 to produce, which equates to about two and half days of searching time.

For the vast majority of requests, there will be no charge for search and collation time.

8.8 Estimating the cost

If an FOI request is complicated and likely to take longer to answer, you will have to consider on a case-by-case basis, and estimate in advance, whether the threshold of £450 would be exceeded. You will have to make such an estimate where you are minded to refuse the request or charge where the threshold has been exceeded.

In estimating the cost of complying with an FOI request, you can take into account the work involved in:

- determining whether the information is held by the Council or another public body etc;
- locating and retrieving the information or a document containing the information; and
- extracting information (including editing (i.e. redacting) from a document. This can include the first time a staff member or another individual working for the Council, 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.

You may take into account the time that persons (Council staff and others, such as consultants/contractors) are expected to spend on the activities referred to above. The cost is to be calculated on the basis of the hourly rate of £25 per person.

It is important to ensure that the fees you estimate are justifiable and appropriate.

Example:

If it would take 30 hours of staff time to locate, sort and edit information in response to an FOI request costing £750 (based on the standard hourly rate of £25 per person) and the cost of photocopying and sending out the information would be £100, you could charge up to a total of £850 for answering the request.



8.9 Excluded costs

You may not take into account any costs other than those set out in para 8.8. In particular, you may not take account of the expected costs of:

- the time taken to check that a request for information meets the requirements of the FOI Act;
- considering whether the information requested should be withheld in reliance on an exemption under the FOI Act. This includes any costs incurred in seeking legal advice about whether exemptions apply;
- considering whether a request is vexatious or a repeated request;
- obtaining authorisation to send out the information;
- the time taken to calculate any fee to be charged; or
- advice and assistance provided.

8.10 Other charging powers

Where you estimate that the cost of complying with an FOI request exceeds the threshold of £450 and the case is one where you may rely on other charging powers, it is the other charging power which will determine how much can be charged and any applicable maximum. Note that this only applies to the fees that are charged. When calculating whether the threshold of £450 is met, you must follow the rules in this section of the Manual, including using the standard hourly rate of £25 per person.

Example:

The Council has existing powers to charge and you estimate that the threshold of £450 has been exceeded. You choose to charge at a rate of £30 per hour for the time taken to comply with requests for disclosure of information. You receive a request that would require 25 hours' work.

- You must calculate whether the appropriate limit has been exceeded using the standard hourly rate of £25 per person, i.e. $£25 \times 25 = £625$.
- As the appropriate limit has been exceeded, if you choose to answer the request, you can charge for the information at the rate of £30 per hour i.e. $£30 \times 25 = £750$.

8.11 Waiver or reduction of fee or charge

Fees may be waived or reduced in the following circumstances:

- (a) the costs disbursements are below £5;
- (b) where the information would be of particular assistance to the understanding of an issue of local/national importance;
- (c) at the discretion of the Managing Director.

8.12 Aggregating the cost



This provision is intended primarily to prevent individuals or organisations circumventing the appropriate limit by splitting a request into smaller parts. As a matter of good practice, you should exercise caution when considering whether requests should be aggregated. There should usually be strong grounds for believing that requests have been framed precisely in order to circumvent the threshold of £450. You should take an overall view of resources which would have to be committed to answering all of the requests and consider refraining from aggregating if, for example, it would mean that the appropriate limit was exceeded by only a very small amount.

You can aggregate the cost of complying with two or more or similar requests from the same individual or from different persons who appear to be acting in concert or as part of a campaign, if the requests are received within 60 consecutive days of each other. The 'real' cost of dealing with the initial request will of course not be apparent until the subsequent request is received.

You could count the cost of replying to one of these requests as the cost of replying to all, which may mean that the combined total of replying exceeds the threshold of £450.

If you are receiving a number of related requests on the same subject, you should consider whether to publish the information where it would appear to be of public interest.

Worked examples:

(a) Two related requests

Example: You receive from the same person two related requests that would meet the criteria for aggregation. Each is costed at £350. The aggregated costs are therefore £700. This exceeds the threshold of £450. You must inform the applicant accordingly. If you choose to answer both requests, you can charge the full £700, together with the costs of communicating the answers to the applicant. You should explain why you have aggregated the two requests.

Although requests are aggregated to calculate the appropriate limit, you can only charge each applicant for the request he/she made. If the requests were received from different people acting together or as part of a campaign, you should charge each person the cost of his/her request (in the above example, £350 plus the cost of communicating each answer). You cannot charge the full cost of the two requests to one of the applicants. As before, you should explain why the requests have been aggregated.



(b) What happens if the first request has already been answered?

In the above example, you received the two requests at the same time. If you had received the two requests at different times, and the first request had already been answered, you could aggregate the costs of the two requests to consider whether the cost of the second request would exceed the threshold of £450. But you must calculate the maximum fee chargeable on the second occasion by reference to the costs of the second request only.

Example: You have answered a request costing £350. You receive a second, related request costing £350 that meets the criteria for aggregation. The aggregated cost, £700, is more than the threshold of £450. You can choose whether or not to answer the second request. If you choose to answer, the maximum you can charge is £350 plus the cost of communicating the second answer. You should explain why the requests have been aggregated for fees purposes. You should also make clear that although the cost of the individual request and the amount being charged was less than the threshold of £450, the aggregated total was over the threshold, thus charging under s.13 of the FOI Act is appropriate.

Similarly, if the requests were received from different people acting together or as part of a campaign, you would only be able to charge the person making the second request, as the first request would already have been answered.

(c) What happens if you receive more than two requests?

You can aggregate any number of requests that you receive within any period of 60 working days. If you receive a series of requests over a longer period than 60 working days, you can only aggregate requests that fall within a 60 working day period.

Example: You receive three requests: request A on the first working day, request B on the 40th working day, and request C on the 70th working day. All requests are on the same subject matter and meet the definition of requests that can be aggregated for the purposes of calculating the threshold of £450.

- you could aggregate requests A and B for the purposes of calculating whether the threshold had been exceeded in either case. You could also aggregate requests B and C in the same way.
- You could not aggregate requests A and C, nor could you aggregate all three requests, as they were received over a longer period than 60 working days.
- you can only ever charge by reference to the costs of the individual case in question. So if requests A and B, and then B and C were aggregated, each request would only be charged for once (i.e. the person making request B would not be charged twice).



8.13 Costs below the threshold [Annex R]

Where the cost of complying with an FOI request **does not exceed** the threshold of £450, the maximum fee which you may charge is:

- the costs of complying with the means or form of communication an applicant may have expressed a preference for;
- the costs of reproducing the information, e.g. photocopy and scanning costs;
- the postage and other forms of transmitting/communicating the information e.g. cost of disks or CDs.

You cannot charge the staff time in undertaking the above activities e.g. staff time incurred in making photocopies, or saving all of the information onto a disk cannot be charged. Nor can any of the costs incurred in determining whether the information is held, locating and retrieving information and extracting or editing it.

8.14 Costs above the threshold [Annex S]

S.13 of the FOI Act provides that fees can be charged for the 'communication of any information' as long as the threshold of £450 is exceeded. This includes communicating whether or not the information is held, even where the information is not itself provided to the applicant.

Example:

You might receive a request for a specific piece of information and there is good reason to suppose from your records that the Council may hold the information. However, it would only be possible to be certain once a search has been made of specific documents. The cost of the search might exceed the threshold of £450.

You could charge for the cost of the search, even if at the end of the search you discovered that the Council did not hold the information, or that the information was exempt (refer to section 6 of this Manual). However, you could not charge for the search if you discovered that you could neither confirm nor deny that the Council held the information.

The right to access to information needs to be balanced by the need of public authorities to carry out their core duties. For this reason, the FOI Act allows for public authorities to decline to comply with certain requests for information on the grounds of cost, where these would be particularly expensive, even if the applicant is willing to pay for the information.

You are not obliged to answer the request, if, to produce the information would **cost more** than the threshold of £450 and where the Council is not otherwise obliged by law, to answer the request. This is known as the 'costs exemption'.

The effect of this, is that you will **not** have to respond to FOI requests if the costs of locating, retrieving and extracting the information, together with the cost of determining whether the Council holds the information, exceeds £450. In



calculating this cost, you are entitled to calculate staff costs at the hourly rate of £25.

Note that the costs exemption does not apply to information which is covered by the Environmental Information Regulations 2004.

If a request is particularly wide-ranging, and therefore likely to be expensive to answer, you should consider discussing this with the applicant to see if the request could be refined to a more manageable level, or resubmitted in part, to bring it below the threshold of £450.

If after providing advice and assistance, the cost is still estimated to be in excess of the threshold, you must inform the applicant as soon as possible (and no later than the 20 working days time limit) that you estimate that the threshold has been exceeded. You then have a number of options.

- you can decide not to provide the information (there may be circumstances in which other factors have to be taken into account in deciding whether or not to provide the information);
- you can answer and charge any permitted fee;
- you can answer without charging.

8.15 Discretionary compliance [Annex T]

Complying with FOI requests which would cost more than the threshold of £450 is discretionary and where you choose to answer the request, you can charge (based on the hourly rate of £25) for the:

- costs of determining whether the Council or another public body holds the information,
- costs of locating and retrieving the information;
- costs of extracting and editing the information;
- costs of communicating the information;
- costs of undertaking the activities referred to above e.g. the staff time incurred in arranging photocopies or in sitting with the applicant whilst he/she inspects the information;

and

- the costs of disbursements.

8.16 Advice and assistance

If you estimate that the total cost of an FOI request will exceed the threshold of £450, then you do not have to comply with the request, but you must still provide advice and assistance. You should discuss with the applicant, whether he/she would prefer to modify/reformulate the request to reduce the cost. Subject to the



guidance in section 6 of this Manual, you should still advise the applicant whether or not you are holding the information.

8.17 Fees Notice [Annex PQ]

para.	s45 Code of Practice
13	Where the applicant indicates that he or she is not prepared to pay the fee notified in any fees notice given to the applicant, the authority should consider whether there is any information that may be of interest to the applicant that is available free of charge.
14	Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12(4), the cost of complying would exceed the "appropriate limit" (i.e. cost threshold), and where the public authority is not prepared to comply on a discretionary basis because of the cost of doing so, the authority should consider providing an indication of what information could be provided within the cost ceiling.

There is no obligation to deal with a request for information where the costs of providing the information exceed the threshold of £450. However, if you are considering facilitating the request, you must provide a 'Fees Notice' [Annex PQ] to the applicant. The Fees Notice must be issued within 20 working days of receipt of the request.

The clock then stops for up to three months whilst you wait for the applicant to pay the fee. If no fee is received within the three month period, the request can be considered closed and the FOI Monitoring System updated accordingly.

Note that where the fee is paid by cheque, the 20 working day time limit starts on the day the cheque is cleared through the Council's bank account. Cheques received by you must be dealt with in accordance with the Council's Financial Regulations.

Example: if a request is received on Monday 1st you issue a Fees Notice on Thursday 4th and payment is received on Wednesday 10th the working days will be calculated as follows:

- Monday 1st request received;
- Tuesday 2nd first working day after date of receipt;
- Wednesday 3rd second working day;
- Thursday 4th Fees Notice issued;
-
- Wednesday 10th payment received;
- Thursday 11th third working day etc.



8.18 Fee Received [Annex U]

Once the fee has been received from the applicant, the request becomes 'live' and the 20 working days target resumes.

It is possible that, an applicant may submit a fee with his/her request. If this is the case, you should acknowledge receipt of the fee and (if applicable) say how much work can be done for the amount of money that has been paid. A Fees Notice might still need to be sent later on, if more money is required.

8.19 Refunds

If the actual cost of answering the request turns out to be greater than the estimated cost charged by way of a maximum fee, the Council must bear the additional cost. You cannot issue another Fees Notice to cover the additional cost.

If the actual cost of answering the request proves to be less than the fee charged, you will refund the excess money to the applicant.

8.20 Mixed requests

A mixed request is a case in which part of the information requested is regulated by one access to information regime, and other parts by other information regimes. The access regimes most likely to be encountered apart from FOI are:

- personal data subject access rights under the Data Protection Act 1998 (the DPA); and
- access to environmental information under the Environmental Information Regulations 2000 (EIR).

Information about the DPA is available at:

www.dca.gov.uk/foi/datprot.htm and www.informationcommissioner.gov.uk

Information about the EIR is available at

<http://www.defra.gov.uk/environment/pubaccess/ecdir/index.htm>

The three regimes have different fee provisions:

- public authorities can usually charge (although note that there are specific fee rules relating to 'unstructured information') no more than £10 for subject access requests made under the DPA;
- the fees regime under the EIR is similar to that for FOI requests (although there is no appropriate limit above which public authorities can refuse requests). Guidance on charging fees under the EIR is available in chapter six of the DEFRA's guidance on EIR (<http://www.defra.gov.uk/corporate/consult/eir-guidance/guidance-6.pdf>).

You must separate out the constituent parts of the request for the purposes of calculating what fees may be charged. Maximum fees must be determined according to each separate regime.



Example: Where a request is for a mixture of an applicant's own personal data, and other information to which the FOI Act applies, then the maximum fee will be the sum of the maximum subject access fee and the maximum fee for providing the remainder of the information calculated under the FOI regime.

8.21 Charging for re-use of disclosed information

Whether or not the Council charges for disclosure of information (either under the FOI Act, or otherwise), the question of whether it may make a charge for the subsequent use of that information is not covered by the FOI Act or the Fees Regulations.

The FOI and DPA Acts do not give public authorities any new powers to charge for the re-use of the information which they disclose. But public authorities can in any event rely on any existing powers they have to charge for the use of information and may derive such powers from other sources.

The EU Directive on the re-use of public sector information seeks to encourage the re-use of documents produced by the public sector. Regulations are expected to be made to implement the Directive under UK law on 1 July 2005. Under the Regulations, public authorities will be able to charge for the re-use of documents. Where charges are made, they should reflect the total cost of collecting, producing, reproducing and disseminating documents, together with a reasonable return on investment. Any charges for re-use should be off-set against any already made under the FOI Act in order to avoid double charging.

8.22 VAT

Ss.9 and 13 of the FOI Act gives public authorities the option to charge for information in accordance with the Fees Regulations (section 8.1 of this Manual refers).

As the FOI Act does not set a specific fee, any monies charged are not statutory fees. However, if the information could only be provided by a public authority (i.e. the information is not also held by organisations that are not public authorities), Customs do not consider that information released under the FOI Act constitutes an economic activity. 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.

If, on the other hand, a public authority is not the only possible source of the information (i.e. the information is also available from a source that is not a public authority), any fees charged would attract VAT, as this would be classed as an economic activity. This distinction is made so as not to distort competition between the public and private sector.

These rules apply equally to requests that are above or below the threshold of £450 – 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.

To summarise:



- If you are asked for information, and the information is only available from the Council or another public authority, any fees charged would not attract VAT.
- If you are asked for information that is available from another source (not being a public authority), any fees would attract VAT. This would still be the case even if the Council was obliged to supply the information because the cost of answering was below the threshold of £450.
- Fees charged for information provided in accordance with the Council's Publication Scheme will attract VAT.

8.23 A dissatisfied applicant

Refer to section 12 of this Manual for details on the complaints and appeals process.

ACTION

- Do you understand how the Fees Regulations work in practice?
- Do you understand that fees and charges under the Publication Scheme are independent of the Fees Regulations?
- Do you understand when a Fees Notice should be issued?
- Do you understand the requirement to provide advice and assistance?
- Do you understand what can be charged for?
- Do you understand the aggregated fees rules?