



FOI AND EIR FEES AND CHARGES GUIDE

Although the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 are similar in some respects, the ability to charge applicants for providing information is different. Below is a table setting out the main differences between the two regimes:

Freedom of Information Act 2000 (FOI)	Environmental Information Regulations 2004 (EIR)
<p>Below the Appropriate Limit</p> <p>No fee is chargeable for the costs of complying with a request where the costs are below the Appropriate Limit, which is:</p> <ul style="list-style-type: none"> £450 for other Public Authorities <p>Expenses</p> <p>However a Public Authority can make a charge for the cost of informing the applicant that they hold the information and communicating the information to the applicant. Costs which the authority can therefore charge include:</p> <ul style="list-style-type: none"> costs of complying with the means or form of communication an applicant may have expressed a preference for; costs of reproducing the information, e.g. photocopy and scanning costs; postage and other forms of transmitting the information e.g. cost of disks or CDs. <p>However authorities CANNOT take into account the staff time in undertaking the above activities.</p>	<p>There is No Appropriate Limit</p> <p>The Public Authority may charge a reasonable amount for making environmental information available (Reg 8).</p> <p>No charge for:</p> <ul style="list-style-type: none"> Allowing an applicant to access any public registers or lists of environmental information held by the Public Authority; or To examine information requested at the place the Public Authority makes available for that examination. <p>What is a reasonable amount?</p> <p>Defra draft guidance states: "<i>When making a charge, whether for information proactively disseminated or provided on request, the charge must not exceed the cost of producing the information unless the Public Authority is entitled to levy a market-based charge</i>".</p> <p>However EC Case Law suggests that a reasonable amount does not permit a Public Authority to pass on the entire costs incurred, in particular, indirect costs incurred in searching for and locating the information. In Commission v Germany (C-217/97) it was held that a reasonable cost did not permit the charging out of</p>



	<p>part of the cost and time of a Public Authority in performing a public duty.</p> <p>Schedule of Charges</p> <p>Public Authorities must publish and make available a schedule of charges (Reg 8(8)). Defra draft guidance suggests this would include a price list for publications or the charge per unit of work which will be incurred to meet the request and that any concessions on charges for certain groups e.g. pupils, students or charitable organisations must be set out in the Schedule of Charges.</p>
<p>Refusal above the Appropriate Limit</p> <p>A Public Authority can chose to refuse a request where compliance would exceed the Appropriate Limit.</p>	<p>No right of refusal on cost grounds</p> <p>There is no right to refuse a request on the grounds that it may be costly to comply.</p> <p>However, if a request is complex or voluminous the Public Authority may extend the timescales for dealing with the request to up to a total of 40 Working Days.</p>
<p>Costs above the Appropriate Limit</p> <p>Where a Public Authority however chooses to comply with a request which is over the fees threshold, they can charge the full costs they incur, namely:</p> <ul style="list-style-type: none">• the costs of determining whether they hold the information, locating and retrieving the information and extracting and editing the information, based on the £25 an hour staff rate;• the costs of advising the applicant that they hold the information and communicating the information;• the staff time in undertaking these activities, e.g. the staff time incurred in arranging photocopies or in sitting with an applicant whilst they inspect information.	<p>N/A</p>



Fees Notice

A Public Authority can require payment by serving a Fees Notice within 20 Working Days of the request, requiring the applicant to pay the fee specified therein.

The applicant has 3 months to pay the fee. Until the applicant does so, the authority does not need to respond to the request.

Fees Notice

A Public Authority can require payment in advance of disclosure by serving a Fees Notice within 20 Working Days advising the applicant of the amount of the advance payment.

The applicant has 60 Working Days to pay the fee. Until the applicant does so, the authority does not need to respond to the request.

Points to consider:

The question of what is a reasonable charge and whether cost estimates calculated under the Freedom of Information Act 2000 to ascertain whether the cost exceeds the Appropriate Limit are areas which an applicant can challenge. If an applicant disagrees with any costs which a Public Authority has calculated then they can complain in the first instance to the Public Authority in accordance with its published complaints procedures. If an applicant still believes that the costs have not been calculated in line with the legislation and guidance, they may make a complaint to the Information Commissioner.

The Information Commissioner has now published a guide explaining how to complain. This is called "*Your Right to know: how to complain*" and is available on the Information Commissioner's website.

Credit: Messrs Walker Morris Solicitors