



Freedom of Information Act Charging Policy Summary

This policy is a sub policy to the Freedom of Information Act policy.

This policy has been written to ensure that the council complies with its obligations and requirements under the Freedom of Information act.

This policy seeks to establish a standard set of conditions, and a framework for charging under the FOI regulations. The Policy is designed to ensure that there are clear internal arrangements for the effective management of the charging policy.

Date of Policy:	26 April 2010
Policy Owner:	Geoff Jones
Ratified by:	EMT
Next Review Date:	April 2011



Great Yarmouth Borough Council
Freedom of Information Charging Policy

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Date	26 April 2010
Version	1.0
Document Status	Final

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1.0 INTRODUCTION

This policy is a sub policy to the council's Freedom of Information Act policy.

1.1 POLICY RATIONALE

This policy has been written to ensure that the council complies with its obligations and requirements under the Freedom of Information act.

The Council is of the view that there is a need to ensure that an agreed standardised approach is being taken to charging for FOI requests, in order to ensure compliance with legal and audit requirements.

This policy seeks to establish a standard set of conditions, and a framework for charging for FOI requests within the Council.

1.2 SCOPE

This Policy will apply to all Council employees.

1.3 PRINCIPLES

The Policy is designed to ensure that there are clear internal arrangements for the effective management of charging for the release of information.

Council policy statement on charging

The Council is committed to openness and aim to release as much information as possible both routinely and in response to requests under Freedom of Information (FOI) legislation.

However the Council is aware that there should be a balance between their policy on openness and the regulatory and enforcement responsibilities imposed by legislation. Consequently the Council's charging policy has been developed in awareness that resource diverted to respond to FOI requests does not impair the Council's mission.

2.0 FREEDOM OF INFORMATION ACT CHARGING POLICY.

2.1 Introduction

The Freedom of Information Act (FOI Act) allows public authorities to charge for answering requests in certain cases. This guidance outlines:

- when the Council will charge fees;
- how fees will be calculated; and
- the procedures that will be followed

There are two types of chargeable fees:

- **prescribed costs** of the request – the cost of finding, sorting, editing or preparing the material when it exceeds £450, as defined in the Fees regulations.
- **disbursements**, such as printing, photocopying, postage or information provided in other formats, to be charged in all cases where costs exceed £10

2.2 Prescribed costs

Section 13 of the FOI Act states that fees can be charged for requests above the appropriate limit. The appropriate limit is:

£450 for local government;

Information will be supplied free of charge, except for disbursements (see section 2.3) for requests costing less than £450

Where the request is still estimated to exceed £450 (2½ days work equivalent on the basis of an 7¼ hour day) the Council will give careful consideration to requests to provide the information. In such cases it may be that diversion of resource from the Council's regulatory and enforcement function will be seen as justified. In such cases Council staff will discuss with the applicant ways of refining the request to a manageable level.

The above does not apply to information requested under the Environmental Information Regulations, which says that no information can be refused on the grounds of cost.

To achieve consistency, all public authorities will use the same hourly rate of £25 per hour per staff member for estimating costs, regardless of seniority of

the staff involved.

The prescribed costs of answering a request are defined as:

- determining whether the information requested is held;
- locating;
- retrieving it; and
- extracting the information to be disclosed from other information, including the first time an individual working in the authority reads information for this purpose (although any subsequent readings, or if the information is passed to others to read, will not be included) and including editing or preparing the information.

The following items will not be included in the prescribed costs:

- the costs involved in considering whether material should be classed as exempt under the Act or whether exempt information should be disclosed under the public interest test. This includes both staff time and the cost of any legal advice that the Council may choose to seek. It also covers situations where the Council can neither confirm nor deny that it holds requested information.
- the costs involved in considering whether a request is vexatious or a repeated request.
- consulting third parties prior to sending out the information.
- overheads, including IT running costs, superannuation costs, building-related costs (heating, lighting etc).
- the time taken to calculate the fees notice, including time taken when aggregating requests.
- the time taken to check that a request for information meets the requirements of the FOI Act (as described in section 8 of the Act).
- advice and assistance provided under section 16 of the Act

If a request is particularly wide-ranging, and therefore likely to be resource intensive and expensive to answer, the Council will discuss this with the applicant to see if the question could be refined to a more manageable level.

2.3 Disbursements

In addition to any charge for the prescribed costs of a request, the Council will also charge for disbursements – that is the cost of physically producing information and sending it out, but will not charge for its time in undertaking these tasks while the prescribed costs do not exceed £450.

Disbursement may include

- photocopying or printing material
- postage

- producing material in an alternative format at the request of the applicant, such as putting it onto CD-Rom, video, or audio cassette
- providing extracts of databases
- translating information into a different language at the request of the applicant.
- allowing the applicant reasonable opportunity to inspect a record containing the information

The Council will take account of the applicant's preferred format for receiving information, so far as this is reasonably practicable. This includes summarising or translating the information, or allowing the applicant reasonable opportunity to inspect a record containing the information. Costs incurred producing material in an alternative format will be included as disbursement costs. However, if these costs are high, the Council will contact the applicant to discuss whether a free or cheaper alternative might meet their needs equally well.

The cost of disbursements does not include any of the costs that are listed above as being either included in or excluded from the prescribed costs.

It also does not cover the cost of putting the material in a different format where this is required by law – for example, the cost of producing material in Braille (as required by the Disability Discrimination Act 1995), or translating information into Welsh (as required by the Welsh Language Act 1993).

The Council will charge for disbursements at:

- ten pence per sheet for printing or photocopying at A4 and twenty pence per sheet for printing or photocopying at A3, colour printing, if appropriate will be fifty pence per sheet for A4, £1.00 for A3 (per sheet means one side of paper). Larger paper sizes will be at the Council's standard rate.
- full postage costs. Documents will be sent by second class mail unless specified otherwise
- actual costs incurred when providing information in other formats as follows: CDs at £1.00 each, Floppy discs at 50p each
- any disbursements involving staff time will be charged at a flat rate cost of £25 per hour.

The Council can charge for disbursements in all cases, whether or not we are also charging for the prescribed costs. In cases where the disbursement cost is low i.e. less than £10 any fee will be waived.

2.4 Fees notices

Where charges are indicated, a fees notice will be issued before the request is answered, giving an estimate of the costs involved. An applicant has three months to pay. If payment is not received, the Council does not have to answer the request

Freedom of Information requests have to be answered not later than the twentieth working day following date of receipt. Where fees apply the date between the issue of the fees notice and the date when the fee is paid are disregarded in calculating the 20 day deadline.

If the actual cost of answering the request is greater than the estimated cost, the Council bears the additional cost.

If the actual cost of answering the request is less than the estimated cost charged, the Council will refund the excess. If the actual cost proves to be less than £450 the Council will refund all the money, less disbursements over £10.

2.5 Aggregating requests for fees purposes

Requests can be aggregated in specified cases for the purposes of calculating fees where two or more requests for information are made –

- (a) by one person, or
- (b) by different persons who appear to be acting in concert or in pursuance of a campaign and
- (c) on the same or a similar subject and
- (d) received before the 60th working day following the date of receipt of the first of the requests.

The Council will exercise caution when considering whether requests should be aggregated, making decisions about aggregating requests on a case by case basis.

2.6 Mixed requests

A mixed request is a case where an applicant requests information under more than one access regime. The most important access regimes apart from FOI are subject access rights under the Data Protection Act 1998 and access to environmental information under the Environmental Information Regulations 2004.

The three regimes have slightly different charging processes:

- the Council charges £5 for “subject access” requests made under the Data Protection Act.
- the charging regime under the Environmental Information Regulations states that authorities cannot refuse to answer requests on grounds of cost.

When calculating fees, the Council will separate out the constituent parts of the request and charge according to each regime.

2.7 Exemptions

Section 21 of the Act exempts authorities from providing information if it is “readily accessible” elsewhere, including if a fee would have to be paid. For example, guidance on regulations laid under the Health and Safety at Work Act 1974 is readily accessible; the Council is exempt from providing this guidance free of charge.

Section 22 of the Act exempts authorities from providing information if it is intended for publication. This includes where the Council plans to charge for the information once it is published.

2.8 VAT

Sections 9 and 13 of the Freedom of Information Act 2000 give public authorities the option to charge for information in accordance with the fees Regulations (SI 2004/3244). As the 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 (ie the information is not also held by organisations that are not public authorities), Customs do not consider that information released under the 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 (ie 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 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 appropriate limit – 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.

So, to summarise:

- If an authority was asked for information, and the information was only available from that authority or another public authority, any fees charged would not attract VAT.
- If an authority was asked for information that was available from another source, any fees would attract VAT. This would still be the case even if the authority was obliged to supply the information because the cost of answering was below the appropriate limit.
- Fees charged for information that is provided in accordance with the public authority’s publication scheme will attract VAT.

2.9 Policy Review

This policy will be managed and reviewed annually, including any revision to charges. Reviews will be subject to scrutiny and, from time to time, updates and re-issues will be circulated. However, the policy will be reviewed sooner if a weakness in the policy is highlighted, in the case of new risks, and/or changes in legislation.

3.0 IMPLEMENTATION AND COMPLIANCE

3.1 IMPLEMENTATION

This policy will initially be implemented through the Chief Executive and Corporate Directors of the Council.

A memo will be sent to all employees to make them aware of the policy.

It is the responsibility of managers to ensure that new staff receive information about this Policy, and should be part of any local induction where appropriate. Human Resources will add the Policy to its list of policy issues provided to any new starters. Managers must also ensure that any changes to this policy are effectively communicated within their areas of responsibility.

All staff will undertake a yearly refresher course covering the basic principles of the Freedom of Information Act and must pass a test to show their understanding.

3.2 COMPLIANCE

Managers are responsible for ensuring that staff are aware of the location of this policy. In addition, Managers are responsible for keeping staff up to date about any changes within the policy.

All staff are obliged to adhere to this Policy.

4.0 EQUALITY IMPACT ASSESSMENT

There are no Equality Impact issues with this policy; however specific procedures used to enact the policy must be evaluated separately.

5.0 HEALTH AND SAFETY

There are no Health and Safety implications with this policy.

6.0 REFERENCE DOCUMENTS

This Policy should be read in conjunction with the following legislation, regulations and Council policies:

- Freedom of Information Act Policy
- Environmental Information Regulations Policy

7.0 DISTRIBUTION

This Policy will be available for all the Council's designated locations. Copies will also be available from the 'I' drive and on the Council's Internet and Intranet web sites.

8.0 REVIEW

This Policy will be reviewed on an annual basis with the next review date being 2011.