

MINISTRY OF JUSTICE, CHARGING GUIDELINES FOR OFFICIAL INFORMATION ACT 1982 REQUESTS

18 March 2002

Official Information Act: Charging for Services

On 18 March 2002 the Government approved the following revised guidelines for charging for official information. These guidelines replace those approved by the State Sector Committee in January 1992 (STA (92) M 1/3) and set out in the Department of Justice memorandum of 26 February 1992.

They are provided for Government Departments, Crown Entities, State-owned Enterprises and all other organisations which are subject to the Official Information Act 1982. They represent what the Government regards as reasonable charges for the purposes of the Official Information Act and *should be followed in all cases unless good reason exists for not doing so*. Organisations covered by the Act who wish to develop their own charging regimes should be aware that charges are liable to review by an Ombudsman.

1. EXISTING CHARGES TO REMAIN

1.1 There are currently areas where access to official information is given free of charge or pursuant to an existing charging arrangement set out in an enactment or regulations. The Official Information Act 1982 does not derogate from such access (section 52 refers); those arrangements are not changed by these guidelines.

2. FIXING THE AMOUNT OF CHARGE

2.1 The amount of charge should be determined by:

- (a) establishing what type of information has been requested:
 - (i) if an identifiable natural person seeks access to *personal information* about that person then the request is governed by the Privacy Act 1993. These guidelines do not apply;
 - (ii) these guidelines apply to all requests for official information, and requests by body corporates for personal information about that body corporate.
- (b) the aggregate amount of staff time *exceeding one hour* spent in actioning the request. This will include search and retrieval of information, the provision of transcripts and the supervision of access.
- (c) the number of A4 sized or foolscap photocopy or printed pages to be provided *exceeding 20*. Non standard sized photocopy or printed paper such as that used for reproducing maps and plans will be charged on an actual and reasonable basis.

- (d) for *any other cost*, the amount actually incurred in responding to the request. This will cover the provision of copies of video, audio and film tapes, the provision of documents on computer disc, the retrieval of information off-site, or other situations where a direct charge is incurred.
- 2.2 Where repeated requests from the same source are made in respect of a common subject over intervals of up to eight weeks, requests after the first should be aggregated for charging purposes.
- 2.3 The charge should represent a reasonable fee for access given. It may include time spent:
- in searching an index to establish the location of the information;
 - in locating (physically) and extracting the information from the place where it is held;
 - in reading or reviewing the information; and -in supervising the access to the information.
- The charge should *not* include any allowance for:
- extra time spent locating and retrieving information when it is not where it ought to be; or
 - time spent deciding whether or not access should be allowed and in what form. Note however that the actual, physical editing of protected information is chargeable.
- 2.4 Where the free threshold is only exceeded by a small margin it is a matter of discretion whether any fee should be paid and if so, how much.

3. STAFF TIME

- 3.1 Time spent by staff searching for relevant material, abstracting and collating, copying, transcribing and supervising access where the total time involved *is in excess of one hour* should be charged out as follows, after that first hour:
- an initial charge of \$38 for the first chargeable half hour or part thereof; and
 - then \$38 for each additional half hour or part thereof.
- 3.2 The rate of charge applies irrespective of the seniority or grading of the staff member who deals with the request, *except* where staff with specialist expertise who are not on salary are *required* to process the request, in which case a higher rate not above their actual rate of pay may be charged.
- 3.3 Time spent by staff in deciding whether or not to approve access and in what form to provide information should *not* be charged. While the decision to delete protected

information is not chargeable, the physical editing is part of making the information available and is subject to charges.

4. PHOTOCOPYING

4.1 Photocopying or printing on standard A4 or foolscap paper where the total number of pages is *in excess of 20 pages* should be charged out as follows:

- 20c for each page after the first 20 pages.

5. OTHER COSTS

5.1 All other charges incurred should be fixed at an amount which recovers up to the actual costs involved. This would include:

- the provision of documents on computer discs;
- the retrieval of information off-site;
- reproducing a film, video or audio recording;
- arranging for the applicant to hear or view an audio or visual recording; and
- providing a copy of any map, plan or other document larger than foolscap size.

6. COST RECOVERY FOR COMMERCIALY VALUABLE INFORMATION

6.1 It is reasonable to recover actual costs involved in producing and supplying information of commercial value. However, the full cost of producing it in the first instance should not be charged to subsequent requesters.

7. REMISSION OF CHARGES

7.1 The liability to pay any charge may be modified or waived at the discretion of the department or organisation receiving the request. Such decisions should have regard to the circumstances of each request. However, it would be appropriate to consider *inter alia*:

- whether payment might cause the applicant hardship;
- whether remission or reduction of the charge would facilitate good relations with the public or assist the department or organisation in its work; and
- whether remission or reduction of the charge would be in the public interest because it is likely to contribute significantly to public understanding of, or effective participation in, the operations or activities of the government, and the disclosure of the information is not primarily in the commercial interest of the requester.

7.2 Questions which could be asked by decision makers in order to establish the level of public interest are, inter alia:

- Is the use of the information by the requester likely to make a significant contribution to operations and activities of government?
- Has the government requested submissions from the public on a particular subject and is the information necessary to enable informed comment?
- Is the use of information likely to contribute significantly to the understanding of the subject by the public at large as opposed to the individual understanding of the requester or a narrow segment of interested people?
- Is the information already in the public domain in either the same or similar form which the requester could acquire without substantial cost?
- Is the public at large the primary beneficiary of the expenditure of public funds necessary to release the information or is it for the requester or a narrow segment of interested people? -Is the information primarily in the commercial interest of the requester rather than the public interest?

7.3 While it might appear on initial consideration that requests for information for, say, research purposes or to write a book or to have available in a library, might be considered in the "public interest" and so answer some of the criteria, this may not necessarily be so. There should still be reasonable evidence to show that wider public benefit will accrue as a result of that research, or book or library depository. In the case of the media, however, it can be reasonably assumed that they do have access to means of public dissemination. Each request should be considered on a case-by-case basis in light of all relevant information.

7.4 Members of Parliament may be exempted from charges for official information provided for their own use. This discretion may be extended to cover political party parliamentary research units when the request for official information has the endorsement of a Member of Parliament. In exercising this discretion it would be appropriate to consider whether remission of charges would be consistent with the need to provide more open access to official information for Members of Parliament in terms of the reasonable exercise of their democratic responsibilities. The overall scheme of the legislation recognises that there is a balance between promoting readier access to official information and the administrative cost in time, labour and materials of that access. Accordingly, one of the factors to be taken into account when deciding whether a part or full charge may be appropriate is the amount of time and resources taken to provide the information requested.

8. DEPOSITS

8.1 A deposit may be required where the charge is likely to exceed \$76 [an hour of chargeable staff time] or where some assurance of payment is required to avoid waste of resources. A deposit may only be requested after a decision has been made to make the information available.

- 8.2 The applicant should be notified of the amount of deposit required, the method of calculating the charge and the likely final amount to be paid. Work on the request may be suspended pending receipt of the deposit.
- 8.3 The unused portion of any deposit should be refunded forthwith to the applicant together with a statement detailing how the balance was expended.

9. COST CONTROL

- 9.1 It is useful to keep in mind certain provisions in the Official Information Act 1982 which may reduce the amount of staff time and resources incurred in dealing with requests. These provisions, which should be considered when a request is first received, are namely:
- (a) Sections 12(2) and 13 which enable the holder of the information to ask the requester to specify the request with due particularity in order to narrow down the scope of the request and thereby reduce *staff* time and effort in responding. Note that section 13 places a duty on the holder to give reasonable assistance to a person to make their request in a manner that is in accordance with section 12;
 - (b) Section 14(b)(ii) which enables the holder to transfer the request where the request relates more closely to the functions of another department, Minister or organisation and where that other department, Minister or organisation is therefore able to deal with the request more efficiently;
 - (c) Section 18(f) which enables the holder to refuse requests which require substantial collation or research; and
 - (d) Section 16 which enables the holder to provide information in a manner other than that requested where compliance with the requester's preferred method of disclosure would "impair efficient administration".

10. REVIEW OF DECISIONS ON CHARGES

- 10.1 Section 28(l)(b) of the Official Information Act 1982 provides that the Ombudsman may investigate and review any decision on the charge to be paid in respect of a request for access to official information. When informing applicants of charges to be paid, organisations should point out this right of appeal to the Ombudsman.
- 10.2 A record should be kept of all costs incurred. Wherever a liability to pay is incurred the applicant should be notified of the method of calculating the charge and this fact noted on the record.

11. OMBUDSMAN INVESTIGATIONS

- 11.1 Any Ombudsman discharging statutory functions of investigation under the Ombudsmen Act 1975, whether for the purposes of that Act, or for reviews under the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987, is not subject to any charging regime. A statutory duty is imposed under that legislation on the person or organisation to comply with any request made pursuant to such an investigation and charging regimes under Government policy are not applicable.

12. GST

- 12.1 The charges given in these guidelines are inclusive of GST.