



## Fees for FOI requests

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This Note sets out the legal position on charging fees for Freedom of Information requests. Requests can be refused if the cost of answering them exceeds the cost limits of £600 for central government and £450 for other public bodies. The Labour Government conducted a review of the [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004](#) in 2007 but eventually decided against any change. The Coalition Government have indicated in response to the Justice Select Committee post-legislative review of the *Freedom of Information Act 2000* that they are minded to amend the *Fees Regulations*, but no formal consultation has yet been announced.

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## 1 Introduction

The *Freedom of Information Act* 2000 does not require charges to be made in answering requests, but public authorities have discretion to charge applicants a fee in accordance with fees regulations made under sections 9, 12 and 13 and subject to the negative resolution procedure. Section 12 provides that a public authority is not obliged to comply with the duty to publish information if the cost of compliance exceeds "the appropriate limit". Where the public body is willing to release the information even where the limit has been exceeded, they may do so. The Information Commissioner's Office has issued guidance entitled *The Requests where the costs of compliance with a request exceed the appropriate limit*,<sup>1</sup>

On 18 October 2004 the then Lord Chancellor, Lord Falconer, announced the outline of the fees regulations.<sup>2</sup> The *Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004* set out how costs are currently calculated.<sup>3</sup> The regulations set an upper limit of £600 for central Government and £450 for other authorities.<sup>4</sup> These regulations remain in force.

In determining whether the upper limit has been exceeded public authorities are limited to considering those costs they reasonably expect to incur in: determining whether it holds the information requested, locating the information or documents containing the information, retrieving such information or documents, and extracting the information from the document containing it (including editing or redacting information). They may not count the cost taken in considering the decision whether to release the information. In so far as those costs relate to staff time, they should be calculated at a standard rate of £25 per hour.

Under the current regime, Departments can also, where appropriate, charge disbursements for providing information to applicants.<sup>5</sup> This might include photocopying and postage costs. In practice, few public bodies have used fees in supplying information. The administration involved in collecting relatively small sums of money has been a deterrent.

### 1.1 Initial review of fees regulation in 2007

The Constitutional Affairs Select Committee conducted an inquiry into the implementation of FoI in 2005, concluding amongst other matters that the fees regulations did not need to be reviewed.<sup>6</sup> However, the Government response announced its initial conclusions following an independent review into the impact of the FoI Act by the consultants Frontier Economics:

The Secretary of State for Constitutional Affairs commissioned an Independent Review to look at the impact of the Freedom of Information Act. This report will be published today on the website [www.foi.gov.uk](http://www.foi.gov.uk).

Following the conclusions of the review the Government is minded to:

i include reading time, consideration time and consultation time in the calculation of the appropriate limit (£600) above which requests could be refused on cost grounds, and

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<sup>1</sup> 20120927, version 1.1, [http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx)

<sup>2</sup> "Most Freedom of Information requests for free-Falconer" 18 October 2004 DCA Press Notice

<sup>3</sup> *The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004* SI 3244/2004 at <http://www.opsi.gov.uk/SI/si2004/20043244.htm>

<sup>4</sup> Further guidance is available from the DCA website at <http://www.oi.gov.uk/practitioner/feesguidance.htm>

<sup>5</sup> HC Deb 12 October 2006 c806-7W

<sup>6</sup> HC 991 2005-06

ii aggregate requests made by any legal person (or persons apparently acting in concert, to each public authority (e.g. Government Department) for the purposes of calculating the appropriate limit

and the Government is not minded to agree the following:

iii. a flat fee for all requests (although this could not be ruled out permanently as Parliament had voted powers in the FOI Act to allow such fees); and

iv. a reduction in the cost threshold to £400.

51. The Government will take stock of the responses to this position before bringing forward secondary legislation. <sup>7</sup>

The then Department of Constitutional Affairs (DCA) published simultaneously the Frontier Economics report entitled *Independent Review of the Impact of the Freedom of Information Act*. The review was commissioned by the DCA in August 2006 and drew on a one week sample of FOI requests across central Government, as well as other sources. <sup>8</sup>

The report suggested that the option of charging for internal reviews could be examined, although primary legislation would be required. It found that journalists accounted for a significant proportion of the serial requestors identified, and estimated that this group accounted for 16 per cent of the total costs of FOI delivery. Although MPs were also identified as one of five key categories of FOI requestor, the report did not consider the use of FOI by Members in any detail.

The option of including reading and consideration time was seen as the most effective in reducing the volume of most expensive cases, without affecting one-off requests from members of the public:

Including reading, consideration and consultation time could reduce the cost of officials' time in central government by 54%, and could be anticipated to have a substantial impact on the other costs associated with FOI – particularly the costs of the internal review and appeal process. This option would result in the exclusion of nearly all of the top 5% of most expensive cases.

The report also suggested that aggregating non-similar requests from the same requestor could substantially reduce the costs of delivering FOI.

The proposals to amend the fees regulations without a formal external consultation were opposed by the Select Committee, the Campaign for Freedom of Information and several Members, 140 of whom signed EDM no 2688 of 2005-06. On 26 November 2006, the then Prime Minister, Tony Blair, announced that the Government would consult 'very widely' on the proposals.<sup>9</sup>

## **1.2 Formal consultation on draft fees regulations December 2006**

On 14 December 2006, the parliamentary under-secretary for Constitutional Affairs, Bridget Prentice, made a written ministerial statement together with the publication of a consultation document and draft regulations. These regulations followed closely the Government proposals of October 2006.<sup>10</sup> Following continued criticism, the Labour MP, Don Touhig,

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<sup>7</sup> *Freedom of Information- One Year On Cm 6937* October 2006

<sup>8</sup> Frontier Economics *Independent Review of the Impact of the Freedom of Information Act 2006*

<sup>9</sup> "Blair bows to pressure over FOI consultation" 27 November 2006 *Newspaper Society*

<sup>10</sup> HC Deb 14 December 2006 c94WS

initiated a Westminster Hall debate on 7 February 2007 on the draft fees regulations. A number of Members indicated that the draft Regulations might have an impact on their constituency work.<sup>11</sup>

In evidence to the Constitutional Affairs Select Committee, the Information Commissioner, Richard Thomas, said that he was concerned about the practicalities of the Government proposals, in assessing the time taken to consider requests:<sup>12</sup>

On 29 March 2007 the Government issued a new consultation paper on FoI Regulations. This was a short document, intended to be a supplement to the earlier consultation. It extended the deadline for responses to 21 June 2007.<sup>13</sup> The supplementary paper sought further comments on the *Draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007* in respect of the principle of amending the current Regulations. The earlier consultation of December 2006 had concentrated on the details of the proposed changes. Specifically, views were sought as to whether the 2004 Regulations should be amended to deal with the problem of 'disproportionately burdensome' requests. The paper noted that there had been over 200 responses to the consultation since December 2006. It did not bring forward any specific proposals for changing the current regulations, beyond the proposals in the original consultation. The decision was linked by commentators to the impending resignation of Tony Blair as Prime Minister, which took place on 27 June 2007.<sup>14</sup>

### **1.3 Outcome of the consultation on fees October 2007**

On 25 October 2007, in a response to the consultation, the Government announced it would withdraw the *Draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007* and also published the summary of responses to the consultation. The consultation conclusion was as follows:

In the consultation process, the majority of respondents opposed the proposed changes to the fees regulations. This was particularly the case with responses from media organisations, other non-governmental organisations and members of the public.

However, some public authorities, especially local authorities, welcomed the prospect of some relief from the administrative burden of the FOI Act.

Taking account of the range of responses received, the Government has decided to make no changes to the existing fees regulations.<sup>15</sup>

The announcement promised to look at non-statutory routes, such as producing clearer guidance on the fees regulations and on vexatious requests. The decision not to proceed with the draft fees regulations was also communicated to the Constitutional Affairs Select

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<sup>11</sup> HC Deb 7 February 2007 c300-320WH

<sup>12</sup> [Uncorrected evidence to Constitutional Affairs Select Committee 20 March 2007](#)

<sup>13</sup> [Supplementary Paper: Consultation on the Draft Freedom of Information and Data Protection \(Appropriate Limit and Fees Regulations\) 2007](#) 29 March 2007 Department of Constitutional Affairs

<sup>14</sup> "Welcome for freedom of information rethink" 29 March 2007 *Campaign for Freedom of Information* at <http://www.cfoi.org.uk/foi290307pr.html>

<sup>15</sup> [Draft Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2007: Response to Consultation](#) Ministry of Justice

Committee in the Government's response to the Committee's second report of 2006-7 *Freedom of Information: Government's proposals for reform*.<sup>16</sup>

## 2 Current review of fees

The Justice Select Committee (successor committee to the Constitutional Affairs Select Committee) conducted a post-legislative review of the *Freedom of Information Act 2000* in 2012. According to the Government response, the Government commissioned research into costs which was shared with the Select Committee in March 2012.<sup>17</sup>

The report considered the question of fees:

55. Durham University summarised the view of many public authorities:

The Fees Regulations do not appropriately take in to consideration the true cost of dealing with many FOI [...] requests. The University is obliged to spend many more than 18 hours work on some information requests due to the fact that we are unable to take time spent on reading and redacting information into consideration when calculating the estimated cost of a response. This has placed considerable burden on the central Data Protection and FOI requests service as complex requests often require considerable reading time and subsequent redaction time. The University is not often able to apply the Section 12 exemption "Where cost of compliance exceeds appropriate limit" as information is usually easily located and retrieved.[]

Despite this evidence JISC InfoNet found the most commonly used exemption in the university sector was section 12: 22% of disclosure refusals relied on the section 12 exemption in 2010, increasing to 28% in 2011.] In contrast, Ministry of Justice statistics show that section 12 was not one of the eight most used exemptions by central Government departments in 2011. Overall, our evidence from public authorities reflected the finding of the Memorandum that:

The appropriate cost limit is largely viewed as inappropriate by public authorities who feel either that the limit is too high or that the range of activities which can be included in its calculation are not comprehensive enough

56. Alex Skene, from the website WhatDoTheyKnow which helps people seeking to make a request under the Act, told us: "The cost limits are broadly about right, because, although many of them tend to go over the limit, those requests are very much on the lines of, "Give me everything you've got on this subject."" Maurice Frankel, of the Campaign for Freedom of Information, gave us the view of requestors:

[the scheme] is a compromise. The UK has an unusual arrangement, which other countries generally do not have. They generally have a provision that allows authorities to refuse if it would result in an unreasonable diversion of their resources, and you have to work that out each time. We have an absolute limit of £600 or £450, which cannot be exceeded even when there is a substantial public interest in gaining access to the information. It is a compromise, with a requirement that people moderate their requests to keep within that limit, and on the whole they do not pay for the information. It gives people a reasonably good chance, but you also see that very large numbers of requests are refused because they exceed the cost limit. It is quite a tricky matter for

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<sup>16</sup> Government's response to the Constitutional Affairs Select Committee's second report of 2006-7 *Freedom of Information: Government's proposals for reform* Cm 7187

<sup>17</sup> Some information is available in *Freedom of Information Act: Statistics on implementation in central Government 2011 Annual and Q4 October –December 2011*

people to bring a request within the cost limit if they do not get good advice from the public authority on how to do it and what information they hold.<sup>18</sup>

The Committee discussed the feasibility of a different approach to calculating costs, concluding against a change:

**60. Developing a methodology whereby subjective activities such as reading and consideration time could be included in the 18 hour time limit does not seem to us to be a feasible proposition. Such activities are overly dependent on the individual FOI officer's abilities, introducing an element of inconsistency into the process that undermines the fundamental objective of the Act, that everyone has an equal right to access information.**

**61. We recognise, however, that complying with its duties under the Act can be a significant cost to a public body. A standard marginal decrease in the 18 hour limit may be justifiable to alleviate the pressure on hard-pressed authorities, particularly in the context of increasing numbers of requests. We would suggest something in the region of two hours, taking the limit to 16 hours rather than 18, but anticipate the Government would want to carry out further work on how this would affect the number of requests rejected under section 12, and the corresponding weakening of the right to access information.**

The [Government's response to the Justice Select Committee](#), which was published in November 2012, proposed changes to the calculation of fees.

15. The Government does not share the assessment of the Committee that it is unfeasible to develop an objective and fair methodology for calculating the cost limit which includes further time spent dealing with information in response to a request. As such, the Government is minded to explore options for providing that time taken to consider and redact information can be included in reaching the cost limit.

16. While this change would affect only a small number of FOI requests, the proportionate reduction in burden would be considerably greater. Evidence from the study by Ipsos MORI commissioned by the Ministry of Justice suggests that the proportion of requests which must be answered under the current regulations, but which would not need to be answered if all activities were included in the cost limit is relatively low at around 4% of requests to central government and 10% for other public authorities. The Ipsos Mori research also concluded that while only 1% of requests to central government cost at least £1,000 to answer these requests made up 5% of total costs.

17. The Government does not agree that inclusion of these sorts of costs would inevitably mean that the application of the costs limit would become more subjective. The cost limit, at present, depends to a large extent on the good faith of the public authorities concerned, and can be a subjective judgement of the person handling the request. Where the cost limit is inappropriately or incorrectly calculated, the ICO is in a position to intervene. The Government does not accept, therefore, that extending the activities which can be included in reaching the cost limit would necessarily demand more subjectivity than is already the case. It also considers that this objection can be addressed by the publication of comprehensive guidance with the aim of ensuring consistency across public authorities. The Government will consult on this change and will seek to develop a method of calculation which assesses the time spent on such activities in a uniform manner across all public authorities.

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<sup>18</sup> [Post-legislative scrutiny of the Freedom of Information Act 2000](#) Justice Select Committee HC 96 2012-13

18. The Government will also look at other options to reduce the burden on public authorities in relation to the cost limit. These will include the possibility of reducing the current overall limits of £600 and £450. The Government does not agree that a two hour reduction in the cost limit would be an appropriate means of reducing the burdens that the Committee recognises. A two-hour reduction would affect a very small number of cases, resulting in minimal reduction in burdens, but the Government will consider whether the measures described above can, on their own or when combined, generate a reduction in burdens without an excessive impact on transparency.<sup>19</sup>

The Justice Minister Helen Grant noted that the Government planned to initiate change in relation to heavy users of FoI in a Westminster Hall debate on the Justice Committee report on 24 January 2013:

Let me now turn to the Act's cost. Despite the many benefits that the Act has brought, we cannot ignore concerns about the burdens that it imposes on public authorities. That is especially important in the current challenging financial climate and at a time when more freedom of information requests than ever are being received. Central Government received 47,000 initial applications in 2011, at a cost of £8.5 million in staff time alone. Local authorities and other public bodies are also affected. We aim to focus our efforts on the disproportionate burdens placed on public authorities by what we call industrial users of the Act.<sup>20</sup>

No further details on the Government's proposals are yet available. The Campaign for Freedom of Information has launched a campaign to protect the current operation of FoI. Its commentary on the Government response to the Justice Committee report, produced in December 2012 and its open letter to the Government minister Lord McNally on 16 May 2013<sup>21</sup> provides background.

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<sup>19</sup> *Government response to the Justice Committee's report Post-Legislative Review of the Freedom of Information Act 2000 Cm 8505*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/162251/gov-resp-justice-comm-foi-act.pdf.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/162251/gov-resp-justice-comm-foi-act.pdf.pdf)

<sup>20</sup> HC Deb 24 January 2013 c174WH

<sup>21</sup> [http://www.cfoi.org.uk/pdf/foipostlegscrutiny\\_cfoicommentgovtresp.pdf](http://www.cfoi.org.uk/pdf/foipostlegscrutiny_cfoicommentgovtresp.pdf)  
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