

Access to Information Charging Policy

- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- Data Protection Act 1998

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Freedom of Information Act, 2000

Background

The Freedom of Information Act 2000 (FOIA) gives a right of access to information held by public authorities, such as Torbay Council. This right of access to information is also enacted in other forms of legislation such as the UK Data Protection Act 1998, Environmental Information Regulations 2004, and a variety of others.

Torbay Council operates a standard procedure in respect of processing Freedom of Information (FOI) requests. If following receipt of a FOI request, it is identified that it is likely a fee will need to be charged, a Fees Notice will be issued and payment will be required before we will proceed with the request. We will endeavour to provide any Fees Notice to the customer within 10 days of the date of the request being received however, this may not always be possible.

The Fees Notice sets out an estimated amount of how much it will be to provide the information requested under the legislation. If no fee is required then the requestor will not be sent anything further. The issuing of a Fees Notice is regulated under section 9 of the FOIA, which states that a public authority that is intending to charge a fee for the provision of the information that has been requested must issue a Fees Notice to the applicant.

Estimating the costs of processing requests

The cost of complying with requests is usually met by the Council however, the right to access information is balanced by the need of the Council to continue to carry out its other duties. For this reason, the FOIA allows public authorities to decline to comply with certain requests on the grounds of cost where these requests for information would be particularly expensive. It also allows public authorities to charge for answering requests in certain circumstances.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) provide the framework for setting the maximum fee when complying with a request for information under FOIA.

Under Regulation 4(3), when estimating the cost of complying with a written request for information, the Council will take into account the staff time involved in the following activities:

- Determining whether the information is held
- Locating the information or a document that may contain the information
- Retrieving and extracting the information, or a document that may obtain the information

The Council cannot take into account the time spent considering exemptions that may apply to the information that has been requested.

The cost of the above activities will be calculated by applying an hourly rate of £25. This rate is set by central government and forms part of the fees regulations. Section 12 of the FOIA states that the Council does not have to make an exact cost when stating the fee, a reasonable estimate will suffice and therefore the Council does not have to undertake the work up to the limit.

Where the cost to process a request is below £450

When the cost of processing a request is below £450 there will be no charge unless it is felt that there are significant disbursement costs (ie. printing, copying and postage – see table below)

Where the cost to process a request exceeds £450

In accordance with the Fee Regulations, Torbay Council is not obliged to respond to a written request for information, where it is estimated that the cost of complying with the request would be in excess of £450. The cost of £450 equates to 18 hours of work at £25 per hour.

When this is the case, in the spirit of the FOIA, Torbay Council will write to the requestor and give them the option of breaking down the request in order to either reduce the cost or take it under the £450 limit.

Disbursements:

Photocopies	
A4 Black and White	10p per sheet
A3 Black and White	20p per sheet
A4 Colour	£1.00 per sheet
A3 Colour	£1.00 per sheet
Fax:	
To UK and Ireland	£1.00 per page
To Europe	£1.75 per page
To rest of the World	£2.00 per page
Prints from a Computer:	
Black and White	10p per page
Colour	50p per page
Photo quality paper prints	£1.00 per page
Electronic Media:	
CD Rom	£1.00
Scanning of A4 Paper Records	£1.40 per image
Scanning of A3 Paper Records	£2.10 per image
Email Attachment	No Charge

Postage costs will also apply and will vary per document as this is in relation to postage rates such as a special delivery etc, as well as the size of the document and the information that is contained within it.

Torbay Council will not charge for:

- Providing information in an alternative format if the Disability Discrimination Act (DDA) covers the person requesting it, unless the original document was a priced publication. In this case the charge for the alternative format will not exceed the cost of the original publication. Appropriate identification will be required for proof of disability.
- Information that requires translation. This only applies if legislation states that it must be supplied free of charge, for example in Northern Ireland there are commitments in section 75 Equality Scheme to make information available in other languages. If there is no legislation that states translation is required then public authorities are not required to translate into another language.

Notifying charges

Where charges apply, Torbay Council will notify the estimated charge to the applicant before doing any charged work. This will be done in the form of a Fees Notice, and will be sent, where possible, within 10 days of the request being received. This should detail a breakdown of the estimated charges and the total. Torbay Council will specify a date within the Fees Notice for the requestor to

respond; if no response is received, it will be assumed that the information is no longer required and the request will be closed.

Where there is a significant difference between the estimated and the actual charge, the Council will notify the applicant.

Where charges apply, Torbay Council will require payment before compiling and supplying information.

If a charge is not paid within the specific time limit of 3 months, the information will not be supplied.

VAT

In regards to Value Added Tax Sections 9 and 13 of the FOIA gives 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 (i.e. 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. Therefore, 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 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.

In summary:

- 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 a public authority's publication scheme will attract VAT.

Extraction and Redaction of documents

In the context of the FOIA redaction is the process of editing the requested information to remove exempt material. This is achieved by blocking out or otherwise deleting words, names, paragraphs, sentences from the document/s prior to release.

Extraction is the process by which information included in the request is separated from the other information within the document/s. The time taken to extract the information can be taken into account when estimating the cost of answering the request, but the time for redaction cannot.

Environmental Information Regulations 2004

Torbay Council will process all requests, irrespective of the cost of processing the request, where the information is covered by the Environmental Information Regulations (EIR).

When dealing with requests for information under EIR, Torbay Council is permitted to charge a reasonable amount. This must only cover actual costs incurred by the Council in producing the information, for example the cost of paper, printing and posting.

Unlike under FOI, Torbay Council cannot charge for the amount of time taken to identify, locate and retrieve information, which may be done when the appropriate limit has been exceeded.

Regulation 8(1) states that a public authority may charge for making environmental information available.

Regulation 8(2) specifies that no charge can be made for accessing public registers or lists of environmental information or for examining the information requested at the place where the authority makes information available for that purpose.

Regulation 8(3) states that a charge may not exceed an amount that the public authority is satisfied is a 'reasonable amount'.

When is a charge prohibited?

As specified above there are two situations where Torbay Council cannot charge for Environmental Information:

1. Access to public registers or lists of environmental information
2. Inspection of the information 'in situ' – This is when the authority provides an area for the information to be viewed.

However, Torbay Council would be able to charge should the requestor wish to have the information in a permanent form, such as it being photocopied, and the EIR charging regime would apply.

What is reasonable?

There is no definition to distinguish what is meant by 'reasonable'. It is down to Torbay Council to satisfy itself that the charge is reasonable. This can be done by ignoring any irrelevant factors and concentrating on the relevant ones, e.g.

- The cost of paper and printing is a relevant factor and included in the charge
- The cost of staff time in identifying, locating and retrieving the information is currently an irrelevant factor, as staff time cannot be counted in respect of the applicant when they are inspecting the information. However this is currently subject to an ICO ruling and may change.

General consideration when looking at charges

- If an authority is entitled to charge a fee based on another statutory provision, such a fee will be considered to be reasonable.

- Any charge should be compatible with encouraging transparency and should not provide an obstacle to accessing information.
- It is thought that Environmental information should be made available to the public and should not be charged for.
- Section V of the Code of Practice, states that charges should be reasonable and in accordance with detailed guidance issued by DEFRA.

Charging Schedule

For a list of charges which can be made for providing hardcopy information, please refer to the Disbursements table available on page 2 of this document.

Applicants will be notified of any charges by way of a Fees Notice in accordance with the same provisions as that of the Freedom of Information Act 2000 as detailed above.

Under EIR, Torbay Council will provide the requestor with a Fees Notice within 20 working days of the request being received. The period from the day of this notification to the day the payment is received does not count towards the time limit for responding and the request will therefore be placed on hold.

The applicant has 60 working days in which to pay, following issue of the Fees Notice. If the payment is not received Torbay Council will not proceed with the request.

The Fees Notice sets out how the fee can be paid.

The UK Data Protection Act 1998

In accordance with the UK Data Protection Act 1998 (DPA), the Council will charge a customer the sum of £10 when he/she requests to receive a copy of their personal data held by the Council.

When a customer requests to see a copy of information relating to themselves under DPA, this is known as a Subject Access Request.

Prior to the fee being requested, the customer needs to complete an application known as the Subject Access Request Form; this can be obtained from the Information Compliance Team or via the Torbay Council website at www.torbay.gov.uk/sar

Torbay Council will only process a Subject Access Request upon receipt of:-

- the £10 fee;
- the appropriate documentation such as the application form; and
- suitable proof of identification such as a photocopy of any of the following items: birth certificate; marriage or civil partnership certificate; driving licence (photocard or paper); passport; two different utility bills (e.g. gas, electricity or water).