

FOISA Guidance

Charging a fee or refusing to comply with a request on excessive cost grounds

Guidance on applying FOISA sections 9, 12 and 13



Scottish Information
Commissioner

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Glossary and abbreviations

Term used	Explanation
FOISA	Freedom of Information (Scotland) Act 2002
SIC/The Commissioner	The Scottish Information Commissioner, staff of SIC (depends on context)
Fees Regulations	Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004
Section 13 Regulations	Freedom of Information (Fees for Disclosure under Section 13)(Scotland) Regulations 2004
Section 60 Code	Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (2016 version)
EIRs	Environmental Information (Scotland) Regulations 2004

Charging and excessive costs

The main points

1. The Freedom of Information (Scotland) Act 2002 (FOISA) allows Scottish public authorities to charge for responding to information requests in certain circumstances. There are strict rules on what can and cannot be charged for, how much an authority can charge and an upper limit (currently £600) beyond which an authority does not have to comply with a request. These rules are set out in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations).
2. Authorities do not **have** to charge fees. Many authorities choose not to charge for responding to requests even where they are entitled to do so.
3. A public authority can, with the agreement of the requester, respond to an information request which costs more than £600 to comply with. There are rules about how much the authority can charge a requester for doing this. These are set out in section 13 of FOISA and in the Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations 2004 (the Section 13 Regulations).
4. There are different rules for charging under the Environmental Information (Scotland) Regulations 2004. The Commissioner has issued separate guidance on charging under the EIRs. See **Appendix 1 – Resources**.

Charging

5. If a public authority wants to charge for complying with an information request, the charge must be in line with the Fees Regulations. The only exception to this is where other legislation specifies the fee that an authority may charge for disclosing the information (section 9(7) of FOISA).
6. This guidance focuses on what can be charged under the Fees Regulations.

Where charges may be applied

Locating the information

7. A public authority is entitled to charge for the direct and indirect costs incurred in locating, retrieving and providing information. However, an authority is **not** entitled to charge for any costs incurred in determining whether it actually holds the information. This means authorities cannot charge for searching for the information if it turns out they don't hold it.
8. The Commissioner expects public authorities to carry out a reasonable search to determine whether they hold information. This means taking adequate, proportionate steps to establish whether they hold information falling within the scope of a request. (See **Appendix 1: Resources** for links to decisions issued by the Commissioner.)

Determining whether information should be provided

9. Public authorities are **not** allowed to charge for any costs incurred in determining whether information should or should not be disclosed. This means, for example, that a public authority cannot charge for the time it spends deciding whether to refuse to respond to a request on the basis that it is vexatious or repeated or for the time it spends deciding whether information is exempt. An authority is not allowed to charge for the time spent deciding

whether a report should be disclosed in full or whether parts of the report should be redacted (blanked out).

10. However, the Commissioner has agreed that public authorities can charge for the cost incurred in physically redacting a document. The actual process of redaction is chargeable, once the decision is taken about whether information can be disclosed or not. (See **Appendix 1: Resources.**)

Example

Officer A is dealing with a request. She decides that a report should be disclosed with financial information redacted. She asks a colleague, Officer B, to go through the document and redact the financial information.

The public authority cannot charge for the time spent by Officer A deciding whether to apply an exemption. It **can** charge for the time Officer B spends redacting the financial information.

If Office A decides to carry out the redactions herself, she will only be able to charge for the time spent redacting – this won't always be easy as deciding whether to apply an exemption will often be done at the same time as the redaction. However, Officer A will need to make a reasonable estimate of the time taken only to redact the information.

Calculating actual costs

Staff costs

11. The Fees Regulations cap the amount which can be charged per hour per member of staff at £15.00. Charges for a person's time should not be rounded up to the hour, but should be expressed as a fraction of an hour if only a fraction is expected to be worked.
12. The fact that staff costs can vary means that, in some cases, whether a requester is entitled to be given information free or at a cost will depend on how much the person dealing with the request earns. Where work could reasonably be done by a member of staff on a lower pay grade, the Commissioner expects fees notices to reflect the cost of that lower grade.
13. The Commissioner may consider the job descriptions of the members of staff involved to determine if the work could reasonably be expected to be done by someone of a lower grade. (See **Appendix 1: Resources.**)
14. The hourly charge must reflect the member of staff's normal salary – not overtime payments. Complying with FOISA requests is a statutory duty and public authorities should put arrangements in place to allow them to respond to requests during the working day. (See **Appendix 1: Resources.**)

Information in other formats

15. Section 11 of FOISA gives requesters the right to express a preference for receiving information in a particular format. For example, a requester who does not have access to a computer may ask for a hard copy of a document which the public authority holds only in electronic format. The requester may also prefer to receive a summary or digest rather than the whole document. A public authority must try to meet these preferences, so far as is reasonably practicable. Where a public authority does this, it is entitled to charge the requester for the costs of carrying out this work.

16. Public authorities may have duties to requesters under the Equality Act 2010. Authorities may not charge for any costs likely to be incurred in fulfilling any such duty.

Other costs

17. Authorities may charge the actual cost of posting and packing the information.

Chargeable amount

18. Paragraphs 5 to 17 set out what costs authorities are entitled to charge for. However, public authorities are **not** entitled to recoup these costs in full. The Fees Regulations limit the chargeable amount to a proportion of the actual cost incurred. Where the cost to the public authority of responding to the information request:

- (i) is £100 or less, no charge can be made
- (ii) is above £100, the authority is allowed to charge 10% of those costs up to £600
- (iii) exceeds £600, the public authority does not have to comply with the request (but must still notify the requester why it does not have to comply).

19. The following are examples of how charging works in practice:

Example 1

Locating and retrieving information will take two members of staff four hours to complete

Actual cost of staff time:	4 hours at £8.50 per hour	£34.00
	4 hours at £14.00 per hour	£56.00
Photocopying:	50 x A4 sheets at 10p per sheet	£5.00
Subtotal		£95.00
Less first £100		(£5.00)
Total chargeable amount x 10%		£0

Outcome: the information will be provided to the requester free of charge as the total falls below £100.

Example 2

Locating and retrieving information will take two members of staff two full days to complete

Actual cost of staff time:	15 hours at £8.50 per hour	£127.50
	15 hours at £14.00 per hour	£210.00
Cost of converting information into sound file for a requester with sight impairment	£50.00	£0
Subtotal		£337.50
Less first £100		£237.50
Chargeable amount = 10%		£23.75

Outcome: on the basis that, under this example, the authority has a duty to the requester under the Equality Act, no charge is made for converting the information into a tape. The first £100 of costs are provided free of charge and the authority is entitled to charge 10% of the remaining costs. The charge to the requester will therefore be £23.75 (i.e. 10% of £237.50).

Excessive costs

20. Public authorities are not required to provide information where the cost of responding to the request exceeds £600. However, that is not usually the end of the matter. Public authorities have a duty to provide reasonable advice and assistance to requesters under section 15 of FOISA. This means that, where an authority estimates that the cost of responding to a request will exceed £600, it is good practice for the authority to discuss the request with the requester to find out if their request could be narrowed to bring it under the £600 limit. (See **Appendix 1: Resources**.)
21. Alternatively, the authority can provide the information free of charge or can, in line with the Section 13 Regulations, with the agreement of the requester, make a charge for responding to the information request.
22. If the Commissioner is satisfied that the cost of providing information to a requester exceeds £600, the Commissioner cannot require the public authority to disclose the information.

Advice and assistance

23. The Commissioner is likely to require the public authority (in line with its duty to provide reasonable advice and assistance) to consult the requester to find out whether it is possible to narrow down the scope of the information request in order to bring it within the £600 limit if it hasn't already done so. Before doing this, authorities might find it helpful to calculate how much it would cost to provide a sample of the information and to tell the requester what information they are likely to be able to provide within the £600 limit.
24. The Section 60 Code, issued by the Scottish Ministers, says:

“When refusing a request on cost grounds, it is good practice for the authority’s response to provide clear advice on how the [requester] could submit a new, narrower request within the cost limit. In giving advice, [the authority] may wish to take account of how much the cost limit has been exceeded.”
25. Any advice or assistance given in this context should be realistic and take account of the likely consequences (for the requester and for compliance) of narrowing the request in a particular way. This is one reason why genuine engagement with the requester is important, rather than simply offering one or more options – the advice or assistance should be tailored as closely as possible to what the requester is actually looking for.
26. In any case, there is nothing to be gained by offering options for narrowing the request which are unlikely to meet the purpose of bringing the cost of compliance within the £600 limit – if, after consultation and due consideration, no viable options are identified, this should be explained to the requester. Equally, the requester should understand if options which would be likely to bring compliance within the cost limit would also be likely to have other consequences for the provision of information – for example, if individuals would be more likely to be identifiable from a narrowed request and disclosure would be likely to breach the data protection principles.
27. Where a public authority has not relied on cost grounds to refuse to provide information, but it comes to the Commissioner’s attention during an investigation that the costs would exceed

£600, the Commissioner cannot order the public authority to disclose the information. (See **Appendix 1: Resources** for links to decisions issued by the Commissioner and for a link to the Section 60 Code.)

Fees notices and timescales

28. Where a public authority wants to charge for providing information, it must give the requester a fees notice within 20 working days after the date of receipt of the information request, setting out the projected costs of dealing with the request. The projected costs should be a reasonable estimate of the costs likely to be incurred and must be based only on the estimated costs to the public authority. For example, if the authority needs to consult with a third party as to whether information can be disclosed, the authority cannot take into account the costs which would be incurred by the third party.
29. If the authority fails to satisfy the Commissioner that it would cost it more than £600 to comply, the Commissioner will require the authority to respond to the request. (See **Appendix 1: Resources**.)
30. The authority does not have to provide the information until the fee has been paid by the requester; this prevents the authority from having to carry out work in the event that the requester decides not to pay for the information. The requester has three months from the date of issue of the notice to pay the fee. If the requester is not happy that the public authority has issued a fees notice, perhaps because they think the fee is too high or because they consider that the information should be provided free of charge, then the requester has the right to request a review of the decision to issue a fees notice.
31. Once a fees notice has been issued, the clock stops when it comes to calculating the 20 working days to respond to a request. The clock starts again on the day the fees notice has been paid. So, if a public authority gives a requester a fees notice on day 15, the public authority will only have five more working days to provide the information once the fees notice has been paid. This means it's good practice for public authorities to issue a fees notice as soon as possible after receiving an information request.
32. Where a fees notice is paid, and the public authority finds out later that it underestimated the costs of complying with the request, the authority **cannot** ask the requester to pay the additional cost. It is the public authority's responsibility to ensure that the fees notice contains an accurate estimate of what the work is likely to cost. Where a requester is unhappy with a fees notice and refers the matter to the Commissioner, the Commissioner will investigate whether the fees notice was accurate. The authority must therefore be able to justify the fee to the Commissioner.
33. If the public authority subsequently finds that it costs less to provide the information than anticipated, the authority should consider issuing a refund of any overpayment. The Commissioner is likely to order a public authority to repay a fee or portion of a fee where the fee was inappropriate or excessive.

Aggregation of costs

34. Section 12 of FOISA gives the Scottish Ministers the power to make regulations to allow costs to be aggregated where two or more requests are made to an authority by:
 - (i) one person;

- (ii) different persons acting in concert or whose requests appear to have been instigated wholly or mainly for a purpose other than obtaining the information itself; or
 - (iii) different persons in circumstances where the authority considers it would be reasonable to make the information available to the public at large.
35. No regulations have been brought into force to cover (i) and (ii).
36. The Fees Regulations do, however, cover the situation in (iii). They allow an authority to refuse to disclose information where two or more people seek what is essentially the same information and the cost of disclosure to both/all the parties would exceed £600. The authority need not disclose the information to the requesters so long as it makes it available to the public within 20 working days of receipt of the first request **and** provided that it notifies all the requesters within that time limit of what it is doing.
37. In a small number of cases, the Commissioner has found that multiple requests made in the same letter or email are so interconnected that the requests should be treated as one for the purpose of determining whether the cost of complying with the request exceeds £600. (See **Appendix 1: Resources**.)

Vexatious requests

38. In some cases, requesters have submitted a large number of separate requests on the same subject with the apparent aim of ensuring that the costs of dealing with each request is less than the £600 limit, even if complying with all of requests would exceed the limit. (For example, instead of making a request for 10 years' worth of information, a requester might make 10 requests each asking for one year's worth of information.)
39. Much depends on the circumstances of each case, but in some cases the Commissioner has found these types of request to be vexatious under section 14 of FOISA. (See **Appendix 1: Resources** for a link to a decision from the Commissioner on this point and to guidance on vexatious requests.)

What if a request is subject to both FOISA and the EIRs?

40. This guidance focuses on charging under FOISA. There is a separate regime covering requests for environmental information: the Environmental Information (Scotland) Regulations 2004 (the EIRs). The EIRs have different charging rules. (See **Appendix 1: Resources** to a link to the Commissioner's guidance on charging under the EIRs.)
41. It's possible that a single request could cover information which is subject to both regimes. For example, someone might ask for a copy of an authority's management team minutes and the authority won't know, without going through the minutes, which of the information is environmental information and which is subject to FOISA.
42. In cases like this, the authority will still need to split up the information into environmental and non-environmental information. It will be entitled to take account of the cost of collating all of the information (whether environmental or non-environmental) in determining whether the excessive costs provisions in section 12 apply to the non-environmental information or whether the request for the environmental information is manifestly unreasonable.

Appendices

Appendix 1: Resources

SIC Decisions

Reference	Decision number	Parties	Summary
8	035/2008	Martin Wilson and the Scottish Ministers	The Ministers refused to comply with the request on the basis that it would cost more than £600 to do so. However, as they did not know for certain whether they held the information Mr Wilson was looking for, we instructed them to carry out a further searches.
8	028/2016	Jackie Baillie MSP and the Scottish Ministers	We expect public authorities to take adequate and proportionate steps to establish whether they hold information falling within the scope of a request. We were satisfied that adequate and proportionate steps had been taken.
10	117/2007	Martin Wilson and Motherwell College	A public authority is entitled to charge for the time spent redacting information so that it can be disclosed.
13	073/2006	Steve Connelly and the University of Glasgow	In this case, having viewed the job description of the officers involved, we were satisfied that it was reasonable for the higher paid member of staff to respond to the request. In this case, that meant it would cost more than £600 to respond and the University wasn't obliged to comply with the request.
14	012/2008	Cllr Paul Welsh and North Lanarkshire Council	Here, the Council based its fees calculation on overtime payments. We disagreed with this approach. Overtime payments should not be included in a fees notice. Authorities should put arrangements in place to allow them to respond to requests during the working day.
20	154/2007	Andrew Picken and the City of Edinburgh Council	Given the duty to provide advice and assistance in section 15 of FOISA, we considered that the Council should have identified how Mr Picken could have brought the cost under the £600 limit.
20	043/2016	Tommy Kane and the Scottish Ministers	Mr Kane asked the Ministers for a list of all meetings with Edinburgh Airport. We were satisfied that it would cost more than £600 to comply. The Ministers had given advice to Mr Kane both at response and review stage about ways in which he could limit the cost of his request, so the Commissioner was satisfied that the Ministers had complied with their duty to give advice and assistance.

23	172/2015	Marc Ellison and the Chief Constable of the Police Service of Scotland	Mr Ellison asked the Police for details of compensation payments they had made. We accepted it would cost more than £600 to respond, but ordered the Police to go back to Mr Ellison and provide him with advice and assistance to see if it was possible to narrow down his request so that it would cost less than £600 to comply.
25	206/2006	Michael Carberry and the Chief Constable of Strathclyde Police	It was not until the investigation that the Police realised that it would cost more than £600 to comply with the request. We agreed with the cost estimates put forward by the Police. As a result, the Commissioner could not require the Police to disclose the information.
27	219/2014	Glen Cawthra and Orkney Islands Council	The Council argued that it would cost more than £600 to comply with the request. In the absence of clear submissions from the Council as to how it had projected the costs, we ordered the Council to respond to the request.
38	063/2005	Macroberts and Caledonian MacBrayne Ltd	The requester made 720 connected requests to Caledonian MacBrayne on the same day. We found that, considered together, the requests were vexatious, given the likely effect dealing with these requests would have on the authority.
35	108/2012	Mr G and the Scottish Prison Service (the SPS)	Mr G asked the SPS for the number of prisoners who had DVDs in their possession and for a list of the titles of the DVDs the prisoners had. We were satisfied that, in this case, the SPS entitled to aggregate the costs of responding to the two requests. It would have been wholly artificial to separate the information required to address the two requests.

All of the Commissioner's decisions are available on the Commissioner's website. To view a decision, go to www.itspublicknowledge.info/decisions and enter the relevant decision number (e.g. 032/2014).

If you don't have access to the internet, contact our office to request a copy of any of the Commissioner's briefings or decisions. Our contact details are on the final page.

Other resources

Paragraph	Resource	Link
1	Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004	http://www.legislation.gov.uk/ssi/2004/467/contents/made
3	Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations 2004	http://www.legislation.gov.uk/ssi/2004/376/contents/made
4 40	EIRs guidance: Charging a fee for environmental information	http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Fees/ChargingEIRs.aspx
27	Section 60 Code	https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/
38	Commissioner's guidance on Vexatious or repeated requests	Vexatious or repeated requests

Appendix 2

Freedom of Information (Scotland) Act 2002: extract

Section 9: Fees

- (1) A Scottish public authority receiving a request which requires it to comply with section 1(1) may, within the time allowed by section 10 for so complying, give the applicant a notice in writing (in this Act referred to as a "fees notice") stating that a fee of an amount specified in the notice is to be charged by the authority for so complying.
 - (2) Subsection (1) is subject to section 19.
 - (3) If a fees notice is given to the applicant, the authority is not obliged to give the requested information unless the fee is duly paid; and for the purposes of this subsection and section 10(2) due payment is payment within the period of three months beginning with the day on which the notice is given.
 - (4) Subject to subsection (7), a fee charged under subsection (1) is to be determined by the authority in accordance with regulations made by the Scottish Ministers.
 - (5) Without prejudice to the generality of subsection (4), the regulations may in particular provide that-
 - (a) a fee is not to exceed such amount as may be specified in, or determined in accordance with, the regulations;
 - (b) a fee is to be calculated in such manner as may be so specified; and
 - (c) no fee is payable in a case so specified.
- ...
- (7) Subsection (4) does not apply where provision is made, by or under enactment, as to the fee that may be charged by the authority for disclosure of the information.

Section 12: Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.
- (2) The regulations may provide that, in such circumstances as they may specify, where two or more requests for information are made to the authority-
 - (a) by one person;
 - (b) by different persons who appear to it to be acting in concert or whose requests appear to have been instigated wholly or mainly for a purpose other than the obtaining of the information itself; or
 - (c) by different persons in circumstances where the authority considers it would be reasonable to make the information available to the public at large and elects to do so,then if the authority estimates that the total cost of complying with both (or all) of the requests exceeds the amount prescribed, in relation to complying with either (or any) of those requests, under subsection (1), section 1(1) does not oblige the authority to comply with either (or any) of those requests.

- (3) The regulations may, in respect of an election made as mentioned in subsection (2)(c), make provision as to the means by which and the time within which the information is to be made available to the public at large.
- (4) The regulations may make provision as to-
 - (a) the costs to be estimated; and
 - (b) the manner in which those costs are to be estimated.
- ...
- (6) References in this section to the cost of complying with a request are not to be construed as including any reference to costs incurred in fulfilling any such duty under or by virtue of the Equality Act 2010 as is mentioned in section 11(5).

Section 13: Fees for disclosure in certain circumstances

- (1) A Scottish public authority may charge for the communication of any information-
 - (a) which by virtue of section 12(1) or (2) it is not obliged to communicate; and
 - (b) which it is not otherwise required by law to communicate,
 such fee as may be determined by it in accordance with regulations made by the Scottish Ministers.
- (2) Without prejudice to the generality of subsection (1), the regulations may in particular provide that a fee-
 - (a) is not to exceed such amount as may be specified in, or determined in accordance with, the regulations; and
 - (b) is to be calculated in such manner as may be so specified.
- ...
- (4) Subsection (1) does not apply where provision is made, by or under any enactment, as to the fee that may be charged by the authority for the disclosure of the information.

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004: extract

Regulation 3: Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
 - (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or
 - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
 - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

Regulation 5: Excessive cost – prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.

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