

LOOE COMMUNITY ACADEMY TRUST

FREEDOM OF INFORMATION POLICY

Introduction

1. The Freedom of Information Act 2000 (FOIA) gives a right of public access to information held by public authorities, including Academies (by virtue of the Academies Act 2010). It is a legal right for any person(s) (or persons corporate) to ask for access to information held by Looe Community Academy Trust (the Academy). The Governing Body is committed to the culture of openness and accountability and the general right of access to information, subject to legal exemptions. This policy outlines the framework for managing requests.

Background

2. The FOIA seeks to promote a culture of openness and accountability amongst public sector bodies, and therefore improve public understanding of how public bodies (which includes the governing bodies of Academies) carry out their duties, why they make the decisions they do, and how they spend public money. Although the FOIA presumes openness, it recognises the need to protect sensitive information in certain circumstances and provides for exemptions.

3. The FOIA is overseen by the Information Commissioner who also has responsibility for the Data Protection Act 1998 (DPA) and The Environmental Information Regulations 2004 (EIR). The DPA enables individuals to access information about themselves. The EIR enables people to access environmental information. The FOIA enables people to access all other information and the reasoning behind decisions and policies that do not fall under DPA or EIR.

Roles and responsibilities

4. The Academy's Governing Body is corporately responsible for ensuring compliance with the FOIA and for reviewing the effectiveness of this policy and the supporting procedures, amending as necessary to incorporate good practice.

5. The Business Manager is responsible for championing freedom of information culture across the Academy and for ensuring the implementation of and compliance with this policy.

6. Leaders and line managers at all levels are responsible for ensuring that their staff are suitably conversant with the freedom of information requirements for their job role and for arranging training as necessary.

Information held by the Academy

7. In general, the information held by the Academy is already accessible, but within a framework which respects the confidentiality of some of that information, in particular with regard to individuals (including students, staff and governors) or regarding any court orders (with such information being subject to the Data Protection Act).

8. A comprehensive list of the types of documents and other information published by or available from the Academy is provided at Annex A via the Information Commissioner's Model Publication Scheme for public bodies.

Requests for Information

9. Any request for information beyond that which is already provided by the Academy (for example, through the Prospectus and Annual Report, or information about students to which parents already have access) should be made in writing (this includes e-mail) to the Headteacher.
10. Section 8 of the FOIA states any request should state the applicants name and address for correspondence and describe details of the information being requested. If a Freedom of Information request is very general, the Academy may contact the enquirer for clarification of the request.
11. The person making the request for information can also indicate how they would like to receive the information and where possible the Academy will try to comply with those wishes. If it is not possible to do so, the Academy will notify the enquirer and offer an alternative.
12. Any member of staff may be approached for information beyond which may be regarded as normal information. In this context, normal means the kind of information that teachers and other members of Academy staff feel confident about giving, as opposed to requests for information which may seem of an intrusive or sensitive nature. If a member of staff receives such a request, they should avoid giving an immediate response and refer the request in the first instance to the Business Manager. Depending upon the nature of the request, the Business Manager may then either sanction a response or refer the request to the relevant person or Governing Body.
13. Under the FOIA, the enquirer is entitled to be told whether the Academy holds the information (the duty to confirm or deny) except where certain exemptions apply.
14. The Business Manager is responsible for ensuring that all members of staff are familiar with this policy and the procedures to be adopted in responding to requests for information under the FOIA.

Responding to Requests for Information

15. Any requests are to be passed to the Business Manager who will then pass the request on to the relevant person or the Governing Body.
16. The relevant person or Committee will meet to consider any requests received and keep records of their deliberations and outcomes, which should be passed to the Business Manager. The potential outcomes are:
 - Agreement to meet the request in full;
 - Agreement to meet the request in part (with reasons);
 - Refusal to meet the request (with reasons).
17. The relevant person or Committee will draft a response to the enquirer within 20 Academy days of the request being made (i.e. excluding weekends and Academy holidays). The draft response will be passed to the Business Manager who will make the formal response on behalf of the Academy. The 20 day time limit starts on the day after the Academy receives the request. The period from the day the fees notice is issued, if applicable, to the day the fee is received (or cleared if paid by cheque) does not count towards the 20 working day limit for response.
18. The response to the request in some circumstances may take longer than 20 days. If a request is delayed for any reason (e.g. if further information is required in order to identify and locate the information requested), the relevant person or Committee will keep the Business Manager informed of the progress and where possible provide an expected date for a response; this will be relayed to the enquirer.

Exemptions

19. Under the FOIA 2000, certain information is exempt from disclosure; a list of exemptions is at Annex B, together with guidance on the public interest test.

The application of exemptions needs to be approved by a qualified person, which in this case is the Chair of the Governing Body, who will give their reasonable opinion that disclosure would or would not be likely to cause the types of prejudice or inhibition listed above.

Resourcing

20. The Act states that requests should not be allowed to cause a drain on the Academy's time, energy and finances to the extent that they negatively affect our normal public functions (defined as in excess of 3.5 days). The Academy can reserve the right to refuse a request if it is likely to be in excess of 3.5 days to find, sort and edit the information requested. Under these circumstances the Academy will provide an opportunity for the request to be refined.

21. Wilfully concealing, damaging or destroying information in order to avoid answering an enquiry is an offence.

22. Any expressions of dissatisfaction with the information provided or the decision to refuse to supply information should be addressed to the Information Commissioner's Office (ICO).

Vexatious Requests

23. Under section 14 of the FOIA if the Committee receives several requests from the same person, or a series of requests that the Business Manager thinks are intended to disrupt the Academy's work, these may be treated as repeated or vexatious. In this case the Academy may refuse to provide the information requested but would issue a refusal notice within 20 Academy days from receipt of the request to the enquirer to explain the decision and reasons for withholding the information; this will include information regarding the appeals process.

Appeals

24. Upon notification of a refusal to meet the request (either in part or in whole), the party making the request for information may appeal the decision. Any such appeal will be considered by an appeals committee consisting of three Governors who have not taken part in any of the original proceedings.

25. The appeals committee will meet in a timely manner such that it can respond to the enquirer within 20 Academy days of the request being made. The appeals committee shall consider each appeal without reference to the records of the original committee meeting at which the request for information was refused.

26. If the enquirer is still not satisfied with the outcome they can commence the complaints process to the ICO. The complaint should be submitted within 6 months of the outcome of the internal review. The enquirer must provide supporting information and evidence along with the completed complaints form. This can be via email to casework@ico.gsi.gov.uk or by post to:

First contact team of the Information Commissioner's Office
Wycliffe House, Water Lane
Wilmslow. SK9 5AF

Use of Information Provided

27. The FOIA allows access to information, but it does not give the enquirer permission to re-use that information for commercial gain. Therefore, the enquirer may reproduce the Academy's copyright protected information free of charge, without specific permission, provided it is not being reproduced for profit, material or financial gain.

28. The material must be reproduced accurately and must not be used in a misleading context. If the enquirer is publishing the material or issuing it to others, they must acknowledge the source of the information, its copyright status and the date of publication, if known.

29. This permission to reproduce the Academy's copyright protected material does not extend to any material that is identified as being the copyright of a third party. Under those circumstances, the enquirer must seek authorisation to reproduce the material from the copyright holder concerned.

Record Keeping

30. Records will be entered into a "Freedom of Information Requests Register" kept within the Academy (in the Business Manager's office). Such records will remain on file for a period of six years and will be disposed of at a set time in each calendar year.

31. The register will include details of:

- The party making the request for information;
- The date upon which the request was received (date stamp) and to whom it was addressed;
- If relevant, the date upon which the request was subsequently referred (internal/external);
- The nature of the information requested;
- The date and time of any meetings convened by a committee;
- The outcome of the nominated person or committee's deliberations, including summary reasons for a refusal (in whole or in part) to meet the information request;
- The response made by nominated person or the committee to the party requesting the information, including the person nominated to implement the response, the date and format of the response and the details of the information provided;
- Any subsequent appeal made by the enquirer;
- The date and time of any meeting convened by an appeals committee;
- The outcome of any appeals committee's deliberations, including summary reasons for a refusal (in whole or in part) to meet the information request;
- The response made by any appeals committee to the party making the appeal, including the person nominated to implement the response, the date and format of the response and the details of the information provided.

Charges

32. The maximum cost limit cannot exceed £450 and will only be charged if the work involved exceeds the 18 hour threshold. Any work involved over 18 hours will be charged at £25 per hour per person involved in locating, collating and retrieving information requested. Further information from the ICO regarding fees is contained at Annex C.

33. All requests for information will be subject to charges where appropriate to cover the costs of photocopying and postage.

34. If a fee is not received within 3 months of issuing a fees notice then the Academy is no longer obliged to respond to the request.

Action on receipt of a request for information

35. The following checklist will assist staff in managing requests:

- Decide whether the request is a request under Data Protection Act, the Environmental Information Regulations or the Freedom of Information Act;
- Decide whether the Academy holds the information or whether the request should be transferred to another body;
- Signpost or provide the information if it has already been made public;
- Inform the enquirer if the information is not held;
- Consider whether a third party's interests might be affected by disclosure and if so consult them;
- Consider whether any exemptions apply and whether they are absolute or qualified;
- Carry out a public interest test to decide if applying the qualified exemption outweighs the public interest in disclosing the information;
- If a request is made for a document that contains exempt personal information, ensure that the personal information is removed as set out in the guidance for Academy's;
- Decide whether the estimated cost of complying with the request will exceed the appropriate limit;
- Consider whether the request is vexatious or repeated.

Annexes:

- A. Information Commissioner's Model Publication Scheme.
- B. Looe Community Academy Trust - List of Exemptions under the FOIA and the Public Interest Test.
- C. Extract of the Information Commissioner's Publication: Freedom of Information Act - Using the Fees Regulations.

Information Commissioner's Model Publication Scheme

Model Publication Scheme

This model publication scheme has been prepared and approved by the Information Commissioner. It may be adopted without modification by any public authority without further approval and will be valid until further notice.

This publication scheme commits an authority to make information available to the public as part of its normal business activities. The information covered is included in the classes of information mentioned below, where this information is held by the authority. Additional assistance is provided to the definition of these classes in sector specific guidance manuals issued by the Information Commissioner.

The scheme commits an authority:

- To proactively publish or otherwise make available as a matter of routine, information, including environmental information, which is held by the authority and falls within the classifications below.
- To specify the information which is held by the authority and falls within the classifications below.
- To proactively publish or otherwise make available as a matter of routine, information in line with the statements contained within this scheme.
- To produce and publish the methods by which the specific information is made routinely available so that it can be easily identified and accessed by members of the public.
- To review and update on a regular basis the information the authority makes available under this scheme.
- To produce a schedule of any fees charged for access to information which is made proactively available.
- To make this publication scheme available to the public.

Classes of Information

- Who we are and what we do.
 - Organisational information, locations and contacts, constitutional and legal governance.
- What we spend and how we spend it.
 - Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.
- What our priorities are and how we are doing.
 - Strategy and performance information, plans, assessments, inspections and reviews.
- How we make decisions.
 - Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.
- Our policies and procedures.
 - Current written protocols for delivering our functions and responsibilities.
- Lists and Registers.
 - Information held in registers required by law and other lists and registers relating to the functions of the authority.
- The Services we Offer.
 - Advice and guidance, booklets and leaflets, transactions and media releases. A description of the services offered.

The classes of information will not generally include:

- Information the disclosure of which is prevented by law, or exempt under the Freedom of Information Act, or is otherwise properly considered to be protected from disclosure.
- Information in draft form.
- Information that is no longer readily available as it is contained in files that have been placed in archive storage, or is difficult to access for similar reasons.

The method by which information published under this scheme will be made available

The authority will indicate clearly to the public what information is covered by this scheme and how it can be obtained.

Where it is within the capability of a public authority, information will be provided on a website. Where it is impracticable to make information available on a website or when an individual does not wish to access the information by the website, a public authority will indicate how information can be obtained by other means and provide it by those means.

In exceptional circumstances some information may be available only by viewing in person. Where this manner is specified, contact details will be provided. An appointment to view the information will be arranged within a reasonable timescale.

Information will be provided in the language in which it is held or in such other language that is legally required. Where an authority is legally required to translate any information, it will do so.

Obligations under disability and discrimination legislation and any other legislation to provide information in other forms and formats will be adhered to when providing information in accordance with this scheme.

Charges which may be made for Information published under this scheme

The purpose of this scheme is to make the maximum amount of information readily available at minimum inconvenience and cost to the public. Charges made by the authority for routinely published material will be justified and transparent and kept to a minimum.

Material which is published and accessed on a website will be provided free of charge.

Charges may be made for information subject to a charging regime specified by Parliament. Charges may be made for actual disbursements incurred such as:

- photocopying
- postage and packaging
- the costs directly incurred as a result of viewing information

Charges may also be made for information provided under this scheme where they are legally authorised, they are in all the circumstances, including the general principles of the right of access to information held by public authorities, justified and are in accordance with a published schedule or schedules of fees which is readily available to the public.

If a charge is to be made, confirmation of the payment due will be given before the information is provided. Payment may be requested prior to provision of the information.

Written Requests

Information held by a public authority that is not published under this scheme can be requested in writing, when its provision will be considered in accordance with the provisions of the Freedom of Information Act.

List of Exemptions under the FOIA 2000 and the Public Interest Test

1. Information intended for future publication (section 22) - if, at the time the request was made, information is held with a view to publication, then it is exempt from disclosure if it is reasonable that it should not be disclosed until the intended publication date. This could apply to statistics published at set intervals, statutory accounts and similar information.
 2. National security (section 24) - information is exempt for the purposes of safeguarding national security.
 3. Defence (section 26) - information is exempt if its disclosure would prejudice the defence of the UK.
 4. International relations (section 27) - information is exempt if its disclosure would, or would be likely to, prejudice relation between the UK and any other state.
 5. Relations within the UK (section 28) - information is exempt if its disclosure would, or would be likely to, prejudice relations between any administration in the UK.
 6. The economy (section 29) - information is exempt if its disclosure would, or would be likely to, prejudice the economic or financial interests of the UK.
 7. Investigations and proceedings conducted by public authorities (section 30) - information is exempt if it has at any time been held by the Academy for the purposes of criminal investigations or proceedings, such as determining whether a person should be charged with an offence or whether a charged person is guilty, or investigations which may lead to a decision to institute criminal proceedings. The duty to confirm or deny does not apply to such information.
 8. Law enforcement (section 31) - information which is not exempt under Section 30 may be exempt under this exemption in the event that disclosure would, or would be likely to, prejudice the following among others:
 - The prevention or detection of crime;
 - The apprehension or prosecution of offenders;
 - The administration of justice;
 - The exercise of functions such as ascertaining if a person has broken the law, is responsible for improper conduct, whether circumstances justify regulatory action, ascertaining a person's fitness or competence in relation to their profession, ascertaining the cause of an accident or protecting or recovering charities or its properties;
 - Any civil proceedings brought by or on behalf of the Academy which arise out of an investigation carried out for any of the purposes mentioned above.
- The duty to confirm or deny does not arise where prejudice would result to any of these matters.
9. Audit functions (section 33) - information is exempt if disclosure would, or would be likely to, prejudice the exercise of an authority's functions in relation to the audit of the accounts of other public authorities. It does not apply to internal audit reports.
 10. Formulation of government policy (section 35) - information held is exempt information if it relates to the formulation or development of government policy, ministerial communications, advice by Law Officers (e.g. the Attorney General) and the operation of any Ministerial private office.

11. Prejudice to the conduct of public affairs (section 36) - information likely to prejudice the maintenance of the convention of the collective responsibility of Ministers or likely to inhibit the free and frank provision of advice or exchange of views.

12. Communications with the Queen (section 37) - information is exempt if it relates to communications with the Queen, the Royal Family or Royal Household or if it relates to the award of honours. The duty to confirm or deny does not arise where this exemption applies.

13. Health and Safety (section 38) - information is exempt if its disclosure would or would be likely to endanger the safety or physical or mental health of any individual. The duty to confirm or deny does not arise where prejudice would result.

14. Environmental information (section 39) - information is exempt under FOI when it is covered by the Environmental Information Regulations.

15. Personal information (section 40) - where the information concerns a third party, it is exempt if its disclosure would contravene the Data Protection Act, or the data protection principles; or if the person to whom the information relates would not have a right of access to it because it falls under one of the exemptions to the Data Protection Act. The duty to confirm or deny does not arise in relations to this information if doing so would be incompatible with any of the above.

16. Legal professional privilege (section 42) - legal professional privilege covers any advice given by legal advisers, solicitors or barristers. Generally such information will be privileged. If the Academy wishes to disclose the information, we will need to seek consent from the provider of the advice. This exemption covers all such information where a claim to legal professional privilege can be maintained in legal proceedings. The duty to confirm or deny does not arise where to do so would involve the disclosure of such information.

17. Commercial interests (section 43) - information is exempt if it constitutes a trade secret or would be likely to prejudice the commercial interests of any person or body, including Academies. The duty to confirm or deny does not arise where prejudice would result to commercial interests but not where the information constitutes a trade secret.

18. If a qualified exemption does apply, there is still a requirement to undertake the public interest test. Factors that may be taken into account include:

For Disclosure	Against Disclosure
Is disclosure likely to increase access to information held by the academy?	Is disclosure likely to distort public reporting or be misleading because it is incomplete?
Is disclosure likely to give the reasons for a decision or allow individuals to understand decisions affecting their lives or assist them in challenging those decisions?	Is premature disclosure likely to prejudice fair scrutiny, or release sensitive issues still on the internal agenda or evolving?
Is disclosure likely to improve the accountability and transparency of the Academy in the use of public funds and help to show that it obtains value for money?	Is disclosure likely to cause unnecessary public alarm or confusion?
Is disclosure likely to contribute to public debate and assist the understanding of existing or proposed policy?	Is disclosure likely to seriously jeopardise the Academy's legal or contractual position?
Is disclosure likely to increase public participation in decision making?	Is disclosure likely to infringe upon other legislation e.g. Data Protection Act?

Is disclosure likely to increase public participation in the political processes in general?	Is disclosure likely to create a controversial precedent on the release of information or impair our ability to obtain information in the future?
Is disclosure likely to bring to light information affecting public safety?	Is disclosure likely to adversely affect the Academy's proper functioning and discourage openness in expressing opinions?
Is disclosure likely to reduce further enquiries on the topic?	If a large amount of information on the topic has already been made available, would further disclosure shed any more light or serve any useful purpose?

19. It should be noted that potential or actual embarrassment to, or loss of confidence in, the academy, staff, or governors is NOT a valid factor to consider.

20. The fact that certain information is technical, complex to understand and may be misunderstood may not of itself be a reason to withhold information.

21. The potential harm of releasing information will reduce over time and should be considered at the time the request is made rather than by reference to when the relevant decision was originally taken.

22. The balance of the public interest in disclosure cannot always be decided on the basis of whether the disclosure of particular information would cause harm, but on certain higher order considerations such as the need to preserve confidentiality of internal discussions.

23. A decision not to release information may be perverse, i.e. would a decision to withhold information because it is not in the public interest to release it, itself result in harm to public safety, the environment or a third party.

24. The Academy will record the answers to these questions and the reasons for these answers. Deciding on the public interest is not simply a matter of adding up the number of relevant factors on each side. The Academy will decide how important each factor is in the circumstances on make an overall assessment. This assessment will be reviewed by the Chair of the Governing Body as the Academy's designated qualified person.

25. Decision for disclosure - where the balance of the public interest lies in disclosure, the enquiry will be dealt with and the information required will be made available.

26. Decision against disclosure - after carrying out the public interest test if it is decided that the exemption should still apply, the Academy will reply to the request with an appropriate reply for the specific circumstances.

Extract of the Information Commissioner's Publication: Freedom of Information Act - Using the Fees Regulations

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities. This is part of a series of guidance notes produced to help public authorities understand their obligations and to promote good practice. This guidance explains the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) and how to apply them. It highlights the main principles that must be followed and gives some examples.

Overview

- Section 9 of the FOIA allows a public authority to charge a fee for providing information in response to a request.
- Such a fee must be determined in accordance with the Fees Regulations.
- Under section 12 of the FOIA a public authority does not have to comply with a request for information if the cost of compliance exceeds the appropriate limit.
- As well as explaining the appropriate limit, the Fees Regulations cover charging for information when the limit is not exceeded, charging for information when the limit is exceeded, and aggregation of requests.
- The Fees Regulations do not apply where a public authority is able to charge for the disclosure of information under any other statutory provision.

The appropriate limit

Section 12 of the FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit. The appropriate limit is the key concept concerning fees.

The Fees Regulations state that this cost limit is £600 for central government, legislative bodies and the armed forces (ie Part 1 of Schedule 1 of the FOIA) and £450 for all other public authorities.

A public authority must still confirm or deny whether it holds the information requested unless the cost of this alone would exceed the appropriate limit.

Using the Fees Regulations

Assessing whether or not the appropriate limit is exceeded

In estimating whether complying with a request would exceed the appropriate limit, Regulation 4 (3) states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

An authority can take into account the costs attributable to the time that persons (both the authority's staff and external contractors) are expected to spend on these activities. Such costs are calculated at £25 per hour per person for all authorities regardless of the actual cost or rate of pay, which means that the limit will be exceeded if these activities exceed 24 hours for central government, legislative bodies and the armed forces, and 18 hours for all other authorities.

NB The figures of £450 and £600 relate only to the appropriate limit; they do not relate to the fees that may be charged.

Estimate

Section 12 makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required.

The estimate must, though, be reasonable and can only be based on the four activities listed above. What amounts to a reasonable ("sensible, realistic and supported by cogent evidence") estimate can only be considered on a case by case basis.

Where a reasonable estimate has been made that the appropriate limit would be exceeded, there is no requirement for a public authority to undertake work up to the limit.

The Information Commissioner can investigate the way in which an estimate has been arrived at, and, if he considers it to be unreasonable, he can substitute his own reasonable estimate.

Search - There may be instances where the search for the information alone will exceed the appropriate limit. There is no requirement for an estimate to be provided before the search is commenced; indeed it will often be necessary to commence the search before an estimate can be provided. It is also possible for a public authority, without providing an initial estimate, to search up to the appropriate limit and then refuse to continue the search.

Exempt information - Once the documentation containing the information has been located and retrieved, a public authority cannot take into account the time taken, or likely to be taken, to consider whether any of the requested information is exempt. Nor can it take into account the time taken, or likely to be taken, to remove the exempt information in order to leave the information that is to be disclosed in response to the request. The activity "extracting the information from a document containing it" refers to the extraction of the information that has been requested out of a document which contains other information, not to the extraction of exempt material from the information that has been requested. For further guidance on this, see Redacting and Extracting Information.

Advice and assistance - Where an authority refuses a request because the appropriate limit has been exceeded, it should, bearing in mind the duty under section 16 of the FOIA to advise and assist an applicant, provide information on how the estimate has been arrived at and provide advice to the applicant as to how the request could be refined or limited to come within the cost limit.

Appropriate limit not reached

Where the cost of compliance does not exceed the appropriate limit, the request must be complied with and the information released, unless an exemption applies.

Regulation 6 sets out the activities that can be charged for in complying with section 1 (1) of the FOIA, but these are not the activities used in the estimation of whether the appropriate limit has been reached. A public authority can recover the reasonable costs incurred in:

- contacting the requester to inform them the information is held, and
- communicating the information to the requester.
- This includes, but is not limited to, the costs of:
- reproducing any document containing the information, eg printing or photocopying;
- postage and other forms of transmitting the information; and
- complying with FOIA section 11 where the applicant has expressed a preference for means of communication and where this is reasonably practicable.

The costs permitted to be charged by Regulation 6 are referred to as 'communication costs'. They are sometimes called disbursements and are limited to expenses actually incurred. The cost of staff time taken to carry out these activities cannot be taken into account.

As stated above, the time taken to redact exempt information cannot be taken into account in estimating the appropriate limit. However, it is possible for the physical costs of redaction to be taken into account under Regulation 6. These could include materials (eg tape) or use (rental, licensing) of specialist equipment for that specific activity.

Example 1

An applicant requests information from a local authority that will cost £425 to locate and retrieve. Communication costs are £50.

Outcome: The appropriate limit of £450 is not exceeded, and so the authority must deal with the request. It is able to charge £50 for communication costs.

Appropriate limit exceeded

Where the estimated costs exceed the appropriate limit, the authority is not obliged to communicate the information to the applicant. There is, though, still an obligation to confirm or deny whether the information is held unless to do this would in itself exceed the appropriate limit.

There is no obligation to comply with the request up to the point at which the appropriate limit has been reached. However, public authorities should have regard to their duties under section 16 of the FOIA to provide advice and assistance to the applicant. Examples of the types of practices authorities might follow in order to comply with these duties are set out in Part II of the Code of Practice issued under section 45 of the FOIA. Paragraph 14 of the Code recommends that, where a public authority estimates that the cost of compliance would exceed the appropriate limit, it should:

- (i) Consider providing an indication of what, if any, information could be provided within the appropriate limit and/or,
- (ii) consider advising the applicant that a narrowed or refocused version of their request could be handled within the appropriate limit.

Even though there is no obligation to comply with a request when the appropriate limit is exceeded, there is provision in the FOIA and the Fees Regulations for an authority to communicate the information and charge a fee in such cases.

As in all cases, there is no obligation to charge fees, and the public authority may decide to provide the information free of charge.

Fees for providing information where the appropriate limit is exceeded

The maximum fee that can be charged in such circumstances is described in the Fees Regulations, and is the sum of:

- the costs which a public authority may take into account in calculating that the appropriate limit was exceeded (as above);
- the communication costs; and
- staff time, at £25 per hour per person, spent on the activities included under communication costs.

NB within the above, fees can be charged for determining whether information is held and for communicating this to the applicant. (This includes communicating whether or not information is held even if it will not be provided.)

Example 2

A central government department estimates that the cost of locating, retrieving and extracting the information will be £800. Communication costs will be £100 and this element of the work will take one member of staff four hours to complete.

Outcome: The appropriate limit is exceeded and so the authority is not obliged to supply the information. If it chooses to do so, the following charges may be made for the following activities:

Locating, retrieving and extracting the information = £800
Communication cost = £100
Staff time spent carrying out communication activities (4 hours at £25) = £100
Total fee = £1,000

Alternative legal power to charge for disclosing information

Section 9(5) of the FOIA recognises that some public authorities are able to charge fees for supplying information on another statutory basis. In such cases the Fees Regulations will not apply. For example, the National Archives is able to charge a search fee, and other fees, for the supply of information in various formats (as well as other services) on the basis of the Public Record Office Fees Order. A public authority that has an alternative statutory basis for charging will therefore calculate the fee it is able to charge in accordance with the alternative regime and inform the applicant accordingly, even if such a charge would be in excess of the fees which would apply under the Fees Regulations.

In some cases, the application of an alternative charge by virtue of enactment may also indicate that a separate access regime, distinct from the FOIA, exists for that particular type of information. The FOIA cannot circumvent other access regimes where it is appropriate for them to be applied. As such, an authority may wish to consider whether the information is exempt by virtue of section 21 of the FOIA as it is reasonably accessible elsewhere.

Aggregation of costs

The Fees Regulations state that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are:

- by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- for the same or similar information; and
- the subsequent request is received by the public authority within 60 working days of the previous request.

The intention of this provision is to prevent individuals or organisations evading the appropriate limit by dividing a request into smaller parts.

The following examples seek to cover most of the circumstances where aggregation will apply:

Example 3

An authority receives two requests from the same person for the same or similar information. The cost of complying with the requests, once aggregated, is calculated to be £800 and so will exceed the appropriate limit. The authority must inform the applicant of this and can either:

- refuse the requests on cost grounds (having first complied with the duty to provide advice and assistance in accordance with section 16 of the FOIA);
- provide the information and charge in accordance with the Fees Regulations (£800 plus communication costs); or
- provide the information and waive any fee.

Example 4

An authority receives a number of requests for the same or similar information from a group of individuals who appear to be acting together. Once aggregated, the cost of complying with the requests is calculated to exceed the appropriate limit and the applicants should be advised of this.

- The authority can refuse to deal with the requests on cost grounds (having first complied with the duty to provide advice and assistance in accordance with section 16 of the FOIA).
- If the authority decides to provide the information and recover costs, it should charge each individual only for the constituent part of their requests. It cannot charge the overall cost of the aggregated requests to each applicant.

Example 5

An authority, having answered a first request, receives a second request which qualifies for aggregation with the first. The authority is able to combine the costs of the two requests in order to calculate whether the appropriate limit is exceeded. If the limit is exceeded, the authority can refuse the second application. If it chooses to provide the information, it can only charge the constituent cost of the second request. It cannot charge the total cost of the aggregated requests. However, where the cost of the second request is less than the appropriate limit, the authority should explain to the applicant that the aggregated cost exceeds the appropriate limit which allows a charge in line with section 13 of the FOIA to be made:

Request 1 – cost of complying = £300

Request 2 - cost of complying = £375

Total cost of complying = £675

Request 1 was answered and the authority was only able to charge communication costs. The requests can be aggregated which means that the appropriate limit is exceeded and so Request 2 can be refused. Should the authority decide to answer Request 2, it can charge the full amount of £375 plus communication costs.

If further requests for the same or similar information are made, they can also be aggregated provided they are received within 60 working days of at least one of the earlier requests.

If an authority regularly receives requests for the same or similar information, it should, as a matter of good practice, consider whether the information can be made available via its publication scheme.

Caution must be exercised when making a decision on the aggregation of requests. For example, the aggregated cost may only exceed the appropriate limit by a small amount in which case the authority may decide not to aggregate the requests.

Public authorities must consider the merits of each case when considering aggregation. In the event that an authority does aggregate requests, it should provide the applicant with the reasons for doing so.

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

Phone: 08456 30 60 60 or 01625 54 57 45 or by Email: please use the online enquiry form on our website at www.ico.gov.uk