

REPORT TO: Cabinet

MEETING DATE: 11 June 2013

BY: Executive Director (Support Services)

SUBJECT: Charging Policy for Data Protection, Freedom of Information, and Environmental Information

1 PURPOSE

- 1.1 The purpose of this report is to seek approval from Cabinet for the Charging Policy for Data Protection, Freedom of Information and Environmental Information.

2 RECOMMENDATIONS

- 2.1 It is recommended that Cabinet approve the attached Charging Policy for Data Protection, Freedom of Information, and Environmental Information.

3 BACKGROUND

- 3.1 The Data Protection Act 1998 allows data controllers to charge £10 for compliance with a subject access request. The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 regulate charging under the Freedom of Information (Scotland) Act 2002. Under the Environmental Information (Scotland) Regulations, regulation 8 permits for the public authority to charge a 'reasonable amount'.
- 3.2 Until now, East Lothian Council has not issued any charges for subject access, freedom of information or environmental information requests.
- 3.3 The number of requests under all three pieces of legislation has been rising steadily over the past years and the burden on council resources has been growing exponentially. Therefore, since all three pieces of legislation expressly permit charging, it was deemed beneficial to East Lothian Council to do so.
- 3.4 The Policy has been subject to Corporate Management Team consideration and approval as well as workforce consultation.

4 POLICY IMPLICATIONS

- 4.1 The Policy was subject to Workforce Consultation and, following comments, the Policy was amended where appropriate. The Council Management Team has considered and commented on the original and final draft of the Policy for onward submission to Cabinet. The Charging Policy is not a collective agreement with the Trades Unions.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 An EQIA has been undertaken and no negative impacts have been identified.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – None.
- 6.2 Personnel – The policy will be communicated via Elnet and E-alert to employees of the Council.
- 6.3 Other – None

7 BACKGROUND PAPERS

- 7.1 None

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EAST LoTHIAN COUNCIL

Information Charging Policy



East Lothian Council

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1. Introduction

The law in Scotland recognises three main statutes that provide the public with a right to information: The Freedom of Information (Scotland) Act (FOISA), the Environmental Information (Scotland) Regulations (EIR) and the Data Protection Act (DPA).

Under FOISA, requesters can ask for all information held by East Lothian Council except information relating to the environment and their own personal data. Environmental information can be obtained under EIR. If requesters wish to access their own personal data, they must make a subject access request under the DPA.

East Lothian Council recognises its obligations to make information readily available and does not want charges to prohibit this right of access to information. However, there may be situations where it is appropriate to charge for requests. This policy outlines the situations where the Council feels it is necessary to make a charge and specifies how the charge will be calculated.

2. Charging under the Freedom of Information (Scotland) Act

2.1 The Fee Regulations

The method of calculating charges within this policy is in accordance with the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004.

- 2.1.1 East Lothian Council is entitled to charge for the direct and indirect costs incurred in locating, retrieving and providing information. However, the Council is not entitled to charge for any costs incurred in determining whether it actually holds the information. Similarly, East Lothian Council is not allowed to charge for any costs incurred in determining whether information should be provided or whether an exemption applies.
- 2.1.2 The Fees Regulations cap the amount which can be charged per hour per member of staff at £15.00. If the work can reasonably be done by a member of staff on a lower grade of pay, then the fees must reflect the cost of that lower grade. 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.
- 2.1.3 East Lothian Council is only allowed to charge if the projected costs exceed £100. The fee will be 10% of the difference between the projected costs and £100.

2.1.4 When estimating the cost of complying with a written request for information, East Lothian Council will take into account the staff time involved in the following activities:

- Locating the information or a document that may contain the information.
- Retrieving and extracting the information, or a document that may contain the information.

2.1.5 Where the cost of complying with a written request for information is estimated to be below £600, there will be no charge unless the charge exceeds £5. Where the charge exceeds £5, the applicant will be issued with a fees notice and must pay the costs within a period of three months before the Council can comply with the request. If a charge is not paid within the specified time limit of three months, the information will not be supplied. In all cases the costs must be 'reasonable'. Where there is a significant difference between the estimated and the actual charge, the Council will notify the requester.

2.1.6 If the Council receives two or more related requests within a period of 60 consecutive working days, from a person or different persons who appear to be acting in concert or in pursuance of a campaign, the costs of complying with the individual requests will be aggregated.

2.1.7 Charges applied by the Council are shown below.

Photocopies:

A4 Black & White 20p per sheet
A3 Black & White 30p per sheet
A4 Colour £1.00 per sheet
A3 Colour £1.50 per sheet

Prints from a PC:

Black & White 20p per page (additional cost for producing A3)
Colour £1.00 per page (additional cost for producing A3)
Photo quality paper prints £1.50 per page
Postage costs will also apply.

The 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 original publication.

2.2 The £600 limit

East Lothian Council is not required to provide information where the cost of the responding to the request exceeds £600. Estimates are based on the same calculations as for the fees notice.

However, East Lothian Council has a duty to provide reasonable advice and assistance to applicants under section 15 of FOISA. This means that where East Lothian Council estimates that the cost of responding to a request will exceed £600, it is good practice to discuss the request with the applicant to find out if the scope of their request could be narrowed to bring it under the £600 limit.

3. Charging under the Environmental Information (Scotland) Regulations

The EIR create a self standing system of giving public access to environmental information held by a range of bodies including East Lothian Council. They are similar in structure to FOISA in that in general if someone requests environmental information which the Council holds, then unless an "exception" applies (these are similar to FOI exemptions) they are entitled to be given the information within 20 working days. As with FOI, a fee may be charged and the enforcement machinery is identical. There is also a duty to advise and assist applicants, as is the case with FOI.

3.1 The amount chargeable

As with FOISA, it is possible to charge a fee for providing environmental information on request, although the specific charging rules are different. In particular, in marked contrast to FOISA, there is no upper or lower limit to the fee which may be charged. Instead the Regulations merely state that the fees shall not exceed "a reasonable amount" and must not exceed the actual costs of producing the information requested. It is possible (as with FOISA) to require payment in advance of providing the information, and written notice of this fact (equivalent to a FOISA fees notice) must be given to the applicant, who then has 60 working days to pay. The compliance timescale clock is stopped during this time. The Council is obliged to publish a Schedule of Fees and information on circumstances in which a fee may be charged, waived or required to be paid in advance. This can be found in the Publication Scheme. It is not permitted to charge for allowing access to registers of environmental information, or for allowing an applicant to examine information at Council offices (as opposed to being given a copy of it).

The following is East Lothian Council's Schedule of Fees for purposes of the Environmental Information (Scotland) Regulations 2004:

3.2. Costs of locating, retrieving and assembling information:

- Chargeable elements will be included in the calculation in accordance with the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004, but without any disregard for the first £100 and without any discount on the elements above £100;
- Staff costs will be charged on the basis of the actual cost to the Council of employing the staff in question for the time spent

This means the Council will calculate the fee for an environmental information request on the basis of the same elements as can be included in the fees for compliance with FOI requests. However in contrast to mainstream FOI fees, actual staff time is not capped at a maximum of £15 per hour but is charged at the actual cost. The lowest grade member(s) of staff available to carry out the task (being of an appropriate grade to be dealing with the information in question and having the requisite skills and knowledge) will be used. In addition the fee will include any costs associated with putting the information into a particular format, copying and postage costs.

3.2. Situations requiring payment in advance

All fees for environmental information requests require to be paid in advance. This is to maintain consistency with the FOI rules.

3.3. Situations where the fee may be waived:

- The Council may elect to waive the fee if satisfied that there is a genuine and widespread public interest in the publication of the information in question. This is unlikely to be the case where a request appears to be driven by commercial interests or is highly specific in terms of focus or geographical area.
- The Council may elect to waive the fee if satisfied that it would be uneconomical to issue a fees notice and process payment.
- The Council may elect to waive the fee where information is requested which consists of a mixture of environmental and non-environmental information, and the non-environmental information would not be subject to a fee in terms of the FOI legislation.
- The Council may elect to apply a disregard of the first £100 of any fee and charge only 10% of the marginal costs between £100 and £550 if it has processed an environmental information request as a mainstream FOI request. This should not be taken as an indication that the same disregard will be applied to any similar requests in future.

4. Data Protection Act 1998

Under the Data Protection Act 1998, the Council will charge an individual the sum of £10 for requesting personal information held by the Council about the individual. These requests for information are referred to as subject access requests.

The Council will not process the subject access request until the £10 fee has been received.

Where the request is small, or it is deemed that the £10 fee is excessive in the circumstances, the fee may be waived or reduced accordingly.

5. Review of charging policy

This policy will be reviewed every two years...

6. Complaints

If the applicant does not agree with the proposed fee, they can appeal through the Council's complaints procedure.

APPENDIX

2004 No. 467

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

Made

26th October 2004

Coming into force

1st January 2005

The Scottish Ministers, in exercise of the powers conferred on them by sections 9(4) and (5) and 12 of the Freedom of Information (Scotland) Act 2002(1) and of all other powers enabling them in that behalf, after consulting the Scottish Information Commissioner in accordance with sections 9(6) and 12(5) of that Act, hereby make the following Regulations, a draft of which has, in accordance with section 72(2)(b) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation and commencement

1.—(1) These Regulations may be cited as the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004.

(2) These Regulations shall come into force on 1st January 2005.

Interpretation

2. In these Regulations—

“the Act” means the Freedom of Information (Scotland) Act 2002;

“prescribed amount” means the amount prescribed in regulation 5; and

“projected costs” has the meaning set out in regulation 3.

Projected costs

3.—(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.

Fee payable

4.—(1) For the purposes of section 9(1) of the Act (fees), the fee which a Scottish public authority may charge is to be determined in accordance with paragraphs (2) to (4).

(2) Where the projected costs do not exceed £100, no fee shall be payable.

(3) Where the projected costs exceed £100 but do not exceed the prescribed amount, the fee shall not exceed 10% of the difference between the projected costs and £100.

(4) The fees notice shall set out the manner in which the fee has been calculated.

Excessive cost – prescribed amount

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

Aggregation of costs

6. Where two or more requests for information are made to a Scottish public authority by different persons, the authority need not comply with either or any of those requests where—

(a) the information sought in the requests covers the same subject matter or overlaps to a significant extent;

(b) the authority estimates that the total cost of complying with both or all of the requests would exceed the prescribed amount;

(c) the authority considers that it would be reasonable to make the information available to the public at large and elects to do so;

(d) within 20 working days of receipt by it of the first of the requests the authority notifies each of the persons making the requests that the information is to be made available in accordance with paragraph (e); and

(e) the authority makes the information available to the public at large within the period specified in paragraph (d).