



Report to Cabinet

Date: 3 March 2005

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Subject: Freedom of Information

1. Reason for Report

1.1 To approve a charging policy for dealing with requests for information.

2. Background

2.1 There are now three main “generalised” routes to access information in the possession of the Council:

2.1.1 The Freedom of Information Act 2000 (FOI);

2.1.2 The Data Protection Act 1998 (DPA); and

2.1.3 The Environmental Information Regulations 2004 (in draft) (EIR).

2.2 This is in addition to other statutory regimes that permit access to information. The legislation is intended to introduce greater transparency and allow more access to information held by public authorities. The majority of costs for complying with requests will be met by the public sector; however, the right to access information has to be balanced by the need of those authorities to carry out their other duties. For this reason, the legislation, in some cases, allows authorities to decline to comply with certain requests for information on the grounds of cost and in some circumstances, to charge for answering requests for information.

2.3 For the purposes of FOI and S9A of DPA (access to unstructured data) an authority may refuse to answer requests for information if the cost of complying would exceed the “appropriate limit”. The limit which has been set for local authorities is £450 and authorities are required to apply an hourly charging rate of £25 per hour to arrive at an estimated cost. If the request can be answered without exceeding this limit, then there is provision for making a limited charge for disbursements. If the

limit would be exceeded the Council may notwithstanding decide to answer the request and in that case a charge may be made.

- 2.4 The EIR provide that a reasonable charge may be made for the supply of information, not to exceed the cost of providing it.
- 2.5 The legislation and the guidance issued suggest that an authority maintain a fees policy which should be made publicly available as an attachment to the Publication Scheme or on the website. Attached at **Appendix 1** is a draft fees policy for approval.

Recommendation

- (i) That Members approve the policy on fees and charges;
- (ii) That the relevant Head of Service and the Monitoring Officer have authority to take all necessary decisions arising out of the application of the charging policy.

REQUESTS FOR INFORMATION

CHARGING POLICY

1. The Policy

1.1 This policy applies to requests for information made under the Freedom of Information Act 2000 (FOI), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR).

1.2 The policy does not apply to information if it is reasonably accessible by other means. So if:

- the Council is obliged to provide the information under some other legislation, or
- the information is included in the Council's Publication Scheme;

then the request will be dealt with and charged for in accordance with those provisions.

2. Requests under the Freedom of Information Act

2.1 The Council is entitled to refuse to answer a request if the cost of complying would exceed the "appropriate limit". The limit has been set nationally for local authorities at £450. FOI imposes two duties on the Council:

- (i) to confirm or deny whether it holds the information requested;
- (ii) to communicate the information if it has it.

2.2 If in unusual and extreme cases, it would cost more than £450 to confirm by itself whether the Council holds the information then the Council is entitled to and will not comply with this duty. In many cases, it will be immediately obvious that dealing with the request will not exceed the £450 limit and will be dealt with without any need for reference to charging.

2.3 If a request is more complicated and likely to take longer to answer the Council will estimate whether the limit will be exceeded. It will do this by estimating how many hours it will take to do those things that it is permitted to charge for and multiply this by the hourly charge of £25.

2.4 If the cost of answering the request is more than £450 the Council will decline to comply with it in most cases. In exceptional circumstance, the Head of Service may agree to comply with the request.

2.5 If the Council receives two or more requests:

- from the same person, or from different people, who appeared to be acting together or pursuing a campaign;
- the requests relate to the same or similar information;
- the requests are received within a space of 60 consecutive working days;

then the Council will add the time involved in answering all those requests together to decide whether the £450 limit is exceeded.

The Council will only do this where it has strong grounds for believing that requests have been framed separately in order to avoid the limit. In deciding whether to aggregate the requests the Head of Service or Services involved in dealing with the request will take an overall view of the resources which would have to be committed to answering all the requests and consider refraining from aggregating if, for example, the limit was exceeded by only a very small amount.

2.6 Where a request would cost less than the £450 limit to comply with the Council will only charge the cost that it expects to incur in:

- informing the applicant whether it holds the information requested; and
- communicating the information to the applicant.

This will include the cost of:

- putting the information in the format requested so far as this is reasonably practicable;
- reproducing any document containing the information eg photocopy or printing; and
- postage and other forms of communicating the information.

The costs will be those actually incurred by the Council. So, if for example, the applicant asks for documents to be translated into a different language then you would be asked to pay for the Council's costs in getting that done. The cost of formatting any requests arising from a disability, such as an answer in Braille, would not be charged for.

2.7 If a request would cost more than the £450 limit to answer, then the Council will decline to answer it other than in exceptional circumstances.

The Council will however discuss with the applicant the possibility of refining the request and resubmitting it in part to bring it below the limit.

- 2.8 If after giving advice and assistance the cost of answering the request is still above the limit and the Head of Service dealing with the request decides that there are exceptional circumstances the Council will answer the request on payment of a fee calculated in accordance with the statutory maximum fee.

3. Requests Under the Data Protection Act

- 3.1 Where the Council receives a personal data subject access request it will charge the prescribed statutory maximum fee - currently £10.
- 3.2 Where the data subject access request includes unstructured personal data as defined in S9A DPA, then the Council will decline to comply with the request where it estimates that the cost of answering the request will exceed the "appropriate limit" ie currently £450 other than where the Monitoring Officer is satisfied that there are exceptional circumstances. The Council will also decline to comply with a request which includes unstructured personal data unless the request contains a description of the data.
- 3.3 Where the data subject access request includes unstructured personal data, but the estimate of the cost of answering the request is less than the appropriate limit, then the statutory maximum fee will be charged - currently £10 for a data subject access request.

4. Requests under the Environmental Information Regulation

- 4.1 The EIR provide that the Council may make a reasonable charge for the supply of environmental information.
- 4.2 No charge will be made for access to any public registers or lists of environmental information held by the Council nor to examine information requested at the Civic Centre.
- 4.3 In all other circumstances the Council will make a charge. The charge will be calculated on the estimated cost of making the information available. The estimate will be based on any hourly rate of £25.
- 4.4 [If we have publications for which we make a charge they should be listed here].

5. General

- 5.1 Where the allowed cost of providing information would be less than £10, the Council will waive any fee payable.
- 5.2 Where the Council propose to charge a fee for answering a request, it will issue a fee notice to the applicant stating the fee. The request will not be dealt with until the fee has been paid.

- 5.3 If the fee is particularly high, the Council will invite the applicant to discuss ways of reducing the required information or providing it in an alternative format which might meet the applicant's needs equally well.
- 5.4 If payment is made by cheque the day on which the cheque clears will be treated as the day on which the fees are paid.
- 5.5 If the actual cost of answering a request proves to be less than the fee charged the Council will refund the excess to the applicant where this is greater than £10.