

## **Access to Information**

### **Freedom of Information Act, 2000**

#### **Background**

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

Torbay Council operates a standard procedure in respect of processing Freedom of Information (FOI) requests. When an FOI request has been received an acknowledgement is sent out to the requestor.

Within the acknowledgement it states that a fee may be payable to process the request; if that is the case a fees notice will be issued and payment will be required before we will proceed with the request. We will endeavour to provide any fees notice to the customer within 10 days of the date of the acknowledgment being sent.

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

#### **Estimating the costs of processing requests**

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

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

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

- Determining whether the information is held
- Locating the information or a document that may contain the information

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

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

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

### **Where the cost to process a request is below £450**

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

### **Where the cost to process a request exceeds £450**

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

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

If the request cannot be reduced and the applicant still wishes to proceed with the request then the cost of complying will be added up and a fees notice will be issued to the requestor.

### **Disbursements**

#### **Photocopies:**

<b>A4 Black and White</b>	<b>10p per sheet</b>
<b>A3 Black and White</b>	<b>20p per sheet</b>
<b>A4 Colour</b>	<b>£1.00 per sheet</b>
<b>A3 Colour</b>	<b>£1.00 per sheet</b>

#### **Fax:**

<b>To UK and Ireland</b>	<b>£1.00 per page</b>
<b>To Europe</b>	<b>£1.75 per page</b>
<b>To rest of the World</b>	<b>£2.00 per page</b>

### **Prints from a Computer:**

<b>Black and White</b>	<b>10p per page</b>
<b>Colour</b>	<b>50p per page</b>
<b>Photo quality paper prints</b>	<b>£1.00 per page</b>

### **Electronic media:**

<b>CD Rom</b>	<b>£1.00</b>
<b>Floppy Disc (1.44MB)</b>	<b>£1.00</b>
<b>Scanning of A4 Paper Records</b>	<b>£1.40 per image</b>
<b>Scanning of A3 Paper Records</b>	<b>£2.10 per image</b>
<b>Email Attachment</b>	<b>No charge</b>

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

### **Torbay Council will not charge for:**

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

### **Notifying charges**

Where charges apply, Torbay Council will notify the estimated charge to the applicant before doing any charged work. This will be done in the form of a fees notice, and will be sent within 10 days of the acknowledgement being sent out to the requestor. This should detail a breakdown of the estimated charges and the total. Torbay Council will give a time limit for the requestor to respond; otherwise it will be assumed that the information is no longer required.

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

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

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

## **VAT**

In regards to Value Added Tax: sections 9 and 13 of the Freedom of Information Act 2000 gives public authorities the option to charge for information in accordance with the fees Regulations (SI 2004/3244).

As the Act does not set a specific fee, any monies charged are not statutory fees. However, if the information could only be provided by a public authority (i.e. the information is not also held by organisations that are not public authorities), Customs do not consider that information released under the Act constitutes an economic activity.

Therefore any fees charged in these circumstances will be outside the scope of VAT. This means that no VAT should be added to the fees.

If, on the other hand, a public authority is not the only possible source of the information (i.e. the information is also available from a source that is not a public authority), any fees charged would attract VAT, as this would be classed as economic activity. This distinction is made so as not to distort competition between the public and private sector.

These rules apply equally to requests that are above or below the appropriate limit - the key determining factor as to whether VAT is charged is whether the information is available from another source that is not a public authority.

In summary:

- If an authority was asked for information, and the information was only available from that authority or another public authority, any fees charged would not attract VAT.
- If an authority was asked for information that was available from another source, any fees would attract VAT. This would still be the case even if the authority was obliged to supply the information because the cost of answering was below the appropriate limit.
- Fees charged for information that is provided in accordance with a public authority's publication scheme will attract VAT.

## **Extraction and Redaction of documents**

In the context of the Freedom of Information Act, 2000 redaction is the process of editing the requested information to remove exempt material. This is achieved by blocking out or otherwise deleting words, names, paragraphs, sentences from the document/s prior to release.

Extraction is the process by which information included in the request is separated from the other information within the document/s.

The time taken to extract the information can be taken into account when estimating the cost of answering the request, but the time for redaction cannot.