

Information Request IC-249183-S5Q1

Disclosure: Information in scope from ICO letter to Plymouth City Council regarding FOI complaint case IC-236886-N5Q9

“Please consider the Commissioner's guidance on charging under the EIR: <https://ico.org.uk/for-organisations/charging-for-information-under-the-eir/>”

“ (i) Schedule of charges

I note that you have provided the complainant with a link to your schedule of charges which states that you will charge for information where the time to respond to a request exceeds 15 minutes.

I do not think that this is a reasonable approach to handling EIR requests given that fees should not deter requestors. The reasonableness test will take into account factors such as the applicant’s circumstances and will also take into account comparative factors, such as the requirements of FOIA, (where at least 18 hours of work need to be carried out, free of charge, before the charging function of section 13 of FOIA becomes applicable). Given the stated presumption towards disclosure under the EIR, a blanket fee of this nature, after only 15 minutes work, would be very unlikely to be considered reasonable.

If there are particular documents which are requested regularly, and where the council is aware would be likely to incur a charge, then this can be included within the schedule (for instance copies of CCTV footage, large scale hard copies of the definitive map, commercial land searches, etc etc).

In conclusion, I don’t therefore think that it’s appropriate to simply set a time limit of 15 minutes given that under FOIA the time limit before charging can be applied is significantly greater.

Please can I ask you to reconsider the council’s schedule of charges in this respect.

(ii) Fees should not deter requestors from requesting environmental information

You need to demonstrate that the amount you are considering charging the requestor does not act as a deterrent to individuals requesting environmental information. The Commissioner's guidance states that:

'You should ensure that any charge you apply does not mean that only those who can afford it can access the environmental information you hold. It is vital that everyone has access to environmental information and has the same opportunities to contribute to public debate. If an applied charge does deter requesters, this undermines the intended purpose of the EIR and the fundamental objectives that it is seeking to achieve.'

" (iii) When and what can you charge for?

Regulation 8(3) makes clear that any charge you levy must not exceed the actual cost of making the information available.

There are two broad types of costs for which you can apply a charge:

- The cost of staff time incurred when preparing information in response to a specific request. This includes time spent locating, retrieving, and extracting the information and putting it into the required format.
- The costs incurred when printing or copying the requested information and sending it to the requester.

You are not able to include the overhead costs of collecting and maintaining the requested information in any cost recovery charge you pass to the requester."

" (iv) Is there a wider value to the request

My primary concern with the council's response is that you are seeking to apply a charge to information which has addresses important issues in relation to the local environment in Plymouth. There is a strong public interest in the council being open about its plans and addressing the public's concerns about its intentions as regards the city centre and the trees within it.

The Commissioner's guidance highlights that an authority should carefully consider its views on charging where the disclosure of the requested information has a wider public value.

'Where the request is for information that may add to public understanding on environmental matters, for example plans to build on greenbelt land or information on emissions, it's unlikely that a charge would be reasonable.'

The requested information relates to a significant plan to redevelop parts of the city centre, which will result in a large number of trees being cut down and the landscape changed significantly. Many individuals have expressed their concerns about the intention to fell so many trees, and the plans are also likely to have a significant effect on the local environment.

The complainant argues that under such circumstances, there is a strong public interest in the information being disclosed, and therefore it is unreasonable for the council to apply a charge for the information which they have requested.

I agree that under the circumstances there is a strong public interest in the information being disclosed, and therefore don't consider that it's applying a fee reasonable in this instance"

" Our preliminary view

It may be helpful if I give you my preliminary views, based upon the information I have seen to date.

Firstly, I note your view that others have requested similar information, and in aggregating the requests you have decided that it is therefore reasonable to charge for the information concerned.

Whilst it may be reasonable to aggregate requests when applying Regulation 12(4)(b) (manifestly unreasonable requests) where there is a campaign etc, there is no specific ability to apply such terms to charging for the requested information.

In situations where a large number of requests are being made which do not specifically fall within the exception in Regulation 12(4)(b), the simpler solution is to ensure that as much information as possible is made available by the council, free of charge, from its website. Proactive dissemination, required under Regulation 4 of the EIR, will negate the need for the council to deal with many of the requests individually.

Given the substantial nature of the plans for Armada Way, and its importance to the City of Plymouth, I do not see that the number of people making requests over the issue of the redevelopment is a strong argument for arguing that the application of charges is reasonable in this case. If anything, it strongly supports the argument that there is a wider public value to this information being disclosed. People will obviously be greatly concerned by the number of trees to be cut down, and by the changes planned. I note that the council has now undertaken a public consultation over the plans.

My initial view is that the fee which you are seeking to charge for the provision of this information is therefore unlikely to be reasonable.

I would argue that the level of fee which you are seeking to charge for this information would act as a deterrent to requestors in this instance.

I have concerns that your published Schedule of Charges policy is in itself a deterrent to requesting environmental information.

Finally, I believe that there is a strong wider public value in the information being disclosed in order that the public can assess how the council's plans will affect the local environment.

Our preliminary view is therefore that it is not reasonable for the council to charge for this information as it relates to an issue which will have a significant impact on the local environment and people living within the area."