

INFORMATION GOVERNANCE CHARGING POLICY

20 February 2019

Prepared by:	Stephen Sermon
Date effective from:	20/02/2019
Policy approved by:	Samantha Donigan
Review Date:	20/02/2022

EIA Required?	<input type="checkbox"/>
EIA Completed?	<input type="checkbox"/>
Revision number:	2
Lead officer:	Assurance Team

1 INTRODUCTION

- 1.1 Stockport Homes has an Information Governance Policy which sets out how it will meet its obligations under the following pieces of legislation:
- Data Protection Act (DPA) 2018
 - General Data Protection Regulation (GDPR) 2018
 - Freedom of Information Act (FOIA) 2000
 - Environmental Information Regulations (EIR) 2004
- 1.2 The Group is able to make charges for providing information to the public (in certain situations) and this policy sets out how and when this will occur.
- 1.3 Any requests for information should be directed to the Assurance Team so that cases can be reviewed and charges applied correctly and consistently.

2 APPROPRIATE LIMIT AND FEES

- 2.1 Section 12 of the FOIA refers to estimations of whether the cost of complying with the request would exceed the “appropriate limit”. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ sets out what this “appropriate limit” is.
- 2.2 The Fees Regulation states that an “appropriate limit” would be £600 in the case of government departments and £450 for all other public authorities. This means that for Stockport Homes, there is a cost ceiling of £450 for any one request.
- 2.3 In assessing whether compliance would reach or exceed the appropriate limit an organisation may consider the cost it reasonably expects to occur in;
- determining whether the information is held
 - locating the information, or a document which may contain it
 - retrieving the information, or a document which may contain it
 - extracting the information from a document containing it
- 2.4 In some cases requests for information under the FOIA may be aggregated and reach the appropriate limit. This is the case where requests are made by the same person, or by several people who appear to be working together or pursuing a particular campaign². The Assurance team will determine whether this is the case.

¹ Known as the Fees Regulation

² This is relevant where valid requests are received with sixty consecutive working days as per Section 5 of the Fees Regulation

3 WHAT THIS MEANS IN PRACTICE - FOIA

- 3.1 Where it **would not exceed** the appropriate limit to comply with a request³, a public authority can choose to charge a fee for what it reasonably expects to incur in:
- Informing the requestor whether it holds the requested information
 - Communicating that information to the requestor (for example, postage and photocopying)
- 3.2 The Group cannot charge for staff time in carrying out these activities.
- 3.3 Information relating to what fees will be charged must be set out in a fees notice and provided to the requestor.
- 3.4 **Where these charges amount to less than £10, it would be standard practice to waive the charges. As almost all of SHG's requests are received and responded to electronically, the opportunity to associate a legitimate charge rarely exists.**
- 3.5 Where it **would exceed** the appropriate limit to comply with a request⁴, an organisation is not obliged to comply with it⁵. An organisation should issue a refusal notice under Section 12 FOIA or, if it offers to provide the information for a fee, then a fees notice should be issued.
- 3.6 Where The Group estimates compliance **would exceed** the appropriate limit, the request will be refused as per Section 12 FOIA 2000 and a refusal notice will be issued. In such cases, The Assurance Team will liaise with the applicant to bring the request within the appropriate limit.
- 3.7 This means that the public authority is prepared to provide the information but will be charging a fee for it. The Group can charge the requestor for the costs it reasonably expects to occur in:
- The costs which may be taken into account in calculating whether the appropriate limit is exceeded
 - The communication costs
 - Staff time communicating the information
- 3.8 The cost of the time taken in redacting any exempt information cannot be included in the estimate. An organisation can however charge for the physical cost of redaction (for example tape, black ink or use of specialist equipment).

³ And so Section 9 of the FOIA applies

⁴ This estimation is based solely upon the cost of determining if information is held, locating it, retrieving it and extracting the information and for SHG this cost ceiling is £450

⁵ And so Section 13 of the FOIA applies

- 3.9 The Group can charge for the time taken by staff on the activities included in communicating the information. This is to be charged at a flat rate of £25 per hour, as per the Fees Regulations.
- 3.10 Once a decision has been made to charge (so the appropriate limit has been exceeded) the cost of staff time to complete the redaction of exempt information can also be included in the charge⁶.

4 WHAT THIS MEANS IN PRACTICE - DPA

- 4.1 When somebody makes a request for information under the Data Protection Act, it is known as a subject access request (SAR).
- 4.2 The introduction of the GDPR 2018 and DPA 2018 has removed the cost previously incurred to the data subject under prior legislation⁷. This means that organisations can no longer charge for subject access requests⁸.
- 4.3 **SAR's are to be provided free of charge unless Section 4.4 applies.**
- 4.4 Where a request is deemed manifestly unfounded, unreasonable or excessive an organisation may refuse to comply with the request or charge a reasonable fee. This applies to the following data subject rights;
- Right of access (Section 45 DPA 2018);
 - Right to rectification (Section 46 DPA 2018);
 - Right to erasure (Section 47 DPA 2018);
 - Rights relating to automated decision-making (Section 50 DPA 2018).
- 4.5 **Stockport Homes reserves the right to charge a reasonable fee of £10 for the enactment of such requests. Where this is the case, the request shall be place on hold until payment is received.**
- 4.6 Where a request relates to “unstructured personal data” (as defined in Section 21(4) of the DPA), Section 24(5) allows the Group to;
- 4.6.1 Refuse to comply with the request where it does not include a description of the personal data;
- 4.6.2 Refuse to comply with the request where it is estimated that the cost of doing so would exceed the appropriate limit as defined in the Fees Regulation. [Note: this does not remove the obligation to confirm or deny whether or not personal data is held unless the estimated cost of complying with that obligation alone would exceed the appropriate maximum].
- 4.7 On occasion, the Group will be required to comply with access requests received from law enforcement and intelligence services. Such requests are to

⁶ This cost cannot be included in the estimate however

⁷ Organisations used to be able to charge £10 for a SAR

⁸ There are exceptions to this where requests are deemed manifestly unfounded, unreasonable or excessive

be handled in line with existing data sharing agreements, approved by Assurance or otherwise required by law.

- 4.8 Where these requests incur costs the Group is able to charge the requestor a reasonable fee. This shall cover the provision of hardware⁹ and not incur any cost for the provision of the information itself.
- 4.9 Until further regulations are published the maximum fee¹⁰ the Group can charge for such requests is £10. The Assurance team will update this policy in due course.

5 WHAT THIS MEANS IN PRACTICE - EIR

- 5.1 Section 39 of the FOIA exempts environmental information from being dealt with under the FOIA. Such requests must be dealt with under the EIR.
- 5.2 There is no appropriate limit in relation to the EIR; however the legislation does make allowance for the organisation to charge for making the information available. The organisation must be satisfied that the amount charged is a reasonable amount¹¹.
- 5.3 The organisation deems it reasonable to utilise the same approach as within the Fees Regulations (even though they don't specifically apply to the EIR) and may charge for such information on the basis of £25 per hour for locating the information and may charge for disbursements for provision of the information (namely, photocopying and postage).
- 5.4 **As with the FOIA, where these costs amount to less than £10, they will usually be waived.**
- 5.5 There will be no charge for allowing access to public register, lists of information held or for viewing information at an office.

6 GENERAL NOTES

- 6.1 Where the estimated cost of responding to a request is greater than the appropriate limit, the Group will be able to choose to refuse the request, charge the full fee or waive the fee.
- 6.2 Where the appropriate limit has been exceeded, the Group will endeavour to work with the requestor to assist them in redefining the request to bring it under the appropriate limit.

⁹ Where information must be shared via a removable disk drive it be done so in line with Stockport Councils Removable media policy

¹⁰ As per Schedule 20, Part 4 (16) DPA 2018

¹¹ As per regulation 8 of the EIR

- 6.3 If a fee is charged and the actual cost is greater, the Group must bear the additional cost. If the cost of answering the request is less than the fee charged, the Group should consider refunding the excess to the applicant.
- 6.4 Stockport Homes will not request a charge / fee that amounts to greater than any valid cost incurred in providing the information.

7 EQUALITY IMPACT ASSESSMENT

- 7.1 An EIA screening has been undertaken and has identified that there is no requirement for an equality impact assessment.

8 OWNERSHIP, MONITORING AND REVIEW

- 8.1 This policy is implemented by the Assurance Manager and will be monitored on an ongoing basis.
- 8.2 The policy will be reviewed every three years or sooner if there is a significant change in legislation.