

REPORT OF: DEMOCRATIC AND LEGAL MANAGER

TO: COUNCIL

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CHARGING FOR ENVIRONMENTAL INFORMATION

PURPOSE OF REPORT

To suggest a way forward for the Council for calculating charges for providing environmental information.

RECOMMENDATIONS

That the Council carries out:

- (1) The costing exercise outlined in paragraph 12 of this Report and then publishes a Schedule of its charges for supplying environmental information.
- (2) An initial assessment of those services which are likely to be affected by this issue and the extent to which we do or don't currently charge.

BACKGROUND

1. In 1998 the members of the European Union signed the Convention on Access to Information, Public Participation in Decision- Making and Access to Justice in Environmental Matters ("the Aarhus Convention"). This established a right for all members of the public to receive environmental information held by public authorities.
2. An EU Directive (2003/4/EC) was then issued requiring member states to guarantee rights of access to environmental information and to ensure that environmental information is progressively made available and disseminated to the public.
3. Directive 2003/4/EC was implemented into UK law by the Environmental Information Regulations 2004. Those Regulations require public authorities to make environmental information available in response to a request.

ISSUES

4. The definition of “environmental information” under the Regulation 2 (1) of the Regulations is as follows:

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—

 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;*
 - (d) reports on the implementation of environmental legislation;*
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
5. It will be seen that this is very wide and will cover information held across the Council. For example, the Local Government Association obtained advice from counsel about what information would be included and that advice said that the majority of planning requests, information about local plans, Section 106 agreements, planning applications and drainage records would come within the definition. Answers to Local Land Charges CON 29 individual questions will certainly be environmental information. However application of building regulations unlikely to be environmental information.
6. The first issue which arose was, if environmental information was to be made available in response to a request, whether personal search companies who inspect the Local Land Charges Register should be charged at all for such access. This came to a head in 2011 when the Coalition Government issued a statement saying that in their view no charge should be made to these companies. This led to 2 High Court actions against all local authorities in England and Wales where groups of personal search companies sought to recover fees paid by them over previous years. Both those cases have recently been settled.
7. The Information Commissioner’s view has been that the only charge which Councils are entitled to make for the supply of environmental information is for photocopying documents, for which 10p per sheet can be charged (this was decided in a First Tier Tribunal case called *Markinson*). However, some Councils have always taken the view that this isn’t

correct and East Sussex County Council brought a case against the Information Commissioner to challenge his view.

8. The European Court gave its judgement on 6th October last year and decided that public authorities can now make charges for the supply of environmental information. The Court said that the following matters can be included in those charges:
 - Staff salary costs – authorities can charge for the costs of staff time spent on “answering individual requests for information”, which includes the time spent on searching for the information and putting it in the form required;
 - Overheads related to staff time (for example heating, lighting, staff training).
 - Only the proportion of overhead costs which are attributable to the supply of information can be charged. For e.g, the full costs of heating the section of the building occupied by the land charges team cannot be recovered if that area is used for other purposes.
 - Disbursements (postal and photocopying costs).
9. However, the Court said that no costs could be charged for maintaining databases of environmental information (these are costs the authority would incur in complying with its obligations under article 3(5) of the Directive).
10. The Court also said that the overall charge must be reasonable and:
 - must not exceed the authority's "actual cost"; and
 - must not have a deterrent effect on those wishing to access environmental information taking into account the financial means of the applicant and an objective analysis of the amount of the charge. The charge must not appear unreasonable to the public bearing in mind the public interest in the protection of the environment.
11. Most importantly, authorities must publish a schedule of their charges or the charge will not be lawful. They must also publish the basis on which the charges were calculated, including as much detail as possible. The schedule must also state:
 - the circumstances in which information can be obtained for free, and explain all the options available and the cost of each one.
 - whether there are any circumstances in which the charges will be waived.
12. The Local Government Association have taken legal advice on what steps Councils should now take in order to be able to make charges for the supply of environmental information. They recommend that in accordance with the European Court judgement in the East Sussex case, Councils should calculate the 3 elements of the cost of supplying environmental information, namely staff time, overhead costs and disbursements. The advice is to look at the 3 elements as follows:

Staff Time

- a. Calculate hourly for staff time. Include salary and on-costs such as national insurance etc.
- b. Calculate how much officer time per hour is spent on answering each type of request on average.
- c. Multiply hourly rate by the amount of time taken (e.g. 15 minutes at £25 per hour will be $0.25 \times £25 =$ a charge of £6.25).

- d. The Information Commissioner suggests a starting point of £25 p/h for Freedom of Information requests and the same starting point could be used in respect of environmental information.

Overhead costs

- e. Only the proportion of overhead costs which arise from the time the staff spent on supplying environmental is recoverable (this cannot include time spent on maintaining registers/lists/databases).
- f. Include costs such as premises costs, electricity, heating, training, and human resources.

Disbursements

Costs incurred in transferring the information to the applicant including:

- g. Postage.
- h. Photocopying including number and size of the sheets to be copied and the lease charge on the photocopying machine. The guide price of 10p per A4 sheet as per the cost of photocopying in *Markinson* still applies and a Council would need to demonstrate a good reason for exceeding it.
- i. Keep a clear audit trail of these costs so that if challenged they can be substantiated.

Once this exercise has been completed, the required schedule of charges can be published.

- 13. It is also suggested that, at the same time, we carry out an initial assessment of those Council services which are likely to be affected by the matters in this Report and review the extent to which we currently make charges for the supply of environmental information.