

# HARLOW COUNCIL

## Access to Information Fees and Charges Policy

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**Policy Aim ..... 3**

**Introduction ..... 3**

**Scope of Policy ..... 3**

**Policy Statement ..... 3**

**Procedures and Guidance ..... 3**

**1. Fees Regulations ..... 3**

**2. Charges for requests under the Freedom of Information Act ..... 3**

**3. Charges for Requests under the Environmental Information Regulations ..... 4**

**4. Charges for Requests under the Data Protection Act ..... 4**

**5. Disbursement Costs for FOIA and EIR Requests ..... 4**

**6. Fees Notices ..... 5**

**7. Combining requests ..... 5**

**8. Value Added Tax ..... 5**

**Further Information ..... 6**

**Appendix A - Definition of Terms used in this Policy ..... 7**

**Appendix B – Disbursement Charges ..... 8**

### Policy Aim

This policy aims to ensure that Harlow Council operates a consistent and fair regime for charging for access to information.

The policy applies to information requests falling under the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) and also subject access requests for personal information under the Data Protection Legislation.

The above legislation is intended to build on existing access channels rather than replace existing access regimes. Therefore if information is reasonably accessible to applicants through other means, such as through other legislation or the Council's Publication Scheme, it is exempt from this policy. Where information is otherwise available, this means the rules for costing and charging for compliance with the Act do not apply.

### Introduction

The Freedom of Information Act, Environmental Information Regulations, and the Data Protection Legislation allow public authorities to charge for answering requests for information in certain cases. This policy aims to set out the fees to be levied by Harlow Council for such requests, and outlines:

- (a) when Harlow Council will charge fees
- (b) how fees will be calculated
- (c) the procedures that will be followed

### Scope of Policy

The Policy applies to all Members, Officers and other staff within Harlow Council.

### Policy Statement

Harlow Council believes that public access to its information improves understanding and strengthens confidence in the work it undertakes. The Council strongly encourages a culture of openness and accountability within the organisation and aims to release as much information as possible both routinely and in response to requests for information.

### Procedures and Guidance

#### 1. Fees Regulations

- 1.1 The method of calculating charges within this policy is in line with The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

#### 2. Charges for requests under the Freedom of Information Act

- 2.1 Under Regulation 3 of the Fees Regulations, the "appropriate limit" is set at £450 for local authorities. Information will be supplied free of charge for requests costing less than £450, apart from any disbursement costs (see 5) that apply.
- 2.2 Based on the standard hourly rate of £25 specified in the Fees Regulations the maximum time spent finding, retrieving and collating information before it exceeds the £450 cost limit is 18 hours.
- 2.3 Public authorities are not obliged to respond to a request where it is estimated the cost of complying exceeds the "appropriate limit" level of 18 hours (i.e. £450).
- 2.4 Where the estimated cost of the request exceeds £450 Harlow Council will decline the request. However we will assist the requestor to redefine the request and determine what might be achieved within the "appropriate limit".
- 2.5 The value of £450 is calculated in staff time undertaking the following duties in relation to the request:
  - determining whether the information is held;

- locating the information, or a document which may contain the information;
- retrieving the information, or document which may contain the information;
- extracting the information to be disclosed from other information;
- communicating the information – this can include the time taken to write a response.

2.6 The following cannot be taken into account when calculating the time spent processing the request:

- checking that a request for information meets the requirements of FOIA;
- locating information due to poor records management practice;
- considering the application of exemptions or the public interest test;
- consulting third parties, including obtaining legal advice, prior to sending out the information;
- considering whether a request is vexatious or repeated;
- the time taken to calculate the fees;
- providing advice and assistance;
- overheads including IT running costs, building related costs etc.

### **3. Charges for Requests under the Environmental Information Regulations**

3.1 Unlike FOIA, there is no “appropriate limit” for requests for information dealt with under the Environmental Information Regulations. The Regulations state that Harlow Council can apply a reasonable charge for providing Environmental Information. Charges levied may not exceed the “actual cost of producing the information” unless the public authority is entitled to levy a market based charge for the information.

3.2 No charges can be made for allowing an applicant:

- access to a public register or list of environmental information;
- to examine the information requested at the place which the public authority makes available for that purpose.

3.3 Also under EIR the Council cannot refuse to answer a request for information solely on grounds of cost.

3.4 In its day to day work the Council receive many requests from individuals and organisations for information about environmental issues. The majority of these requests are simple enquiries that require a basic answer and are dealt with promptly and without charge.

3.5 In the interests of consistency with the FOIA, Harlow Council will charge a standard fee of £25 per hour (based on the FOIA / DPA Fees Regulations) where the request for environmental information is more complex and requires the information to be specifically collated in order to respond to the request. Disbursement costs may also be charged (see 5).

### **4. Charges for Requests under the Data Protection Legislation**

4.1 Requests from data subjects for access to personal information held by the Council about themselves, will be dealt with accordance with the Data Protection Legislation.

4.2 All requests must be answered and the personal information will be provided free of charge and within 20 working days, however a reasonable fee, based on the administrative cost of providing the information, can be applied where the request is manifestly unfounded or the requests are excessive / repetitive. In limited circumstance a request can be refused. Guidance should be sought from the Council’s Data Protection Officer as to whether these exemptions apply.

### **5. Disbursement Costs for FOIA and EIR Requests**

5.1 Harlow Council will charge for disbursements, these include:

- photocopying or printing material;
- postage;
- producing material in an alternative format at the request of the applicant, such as putting it onto a CD Rom;

- providing extracts of databases;
- translating information into a different language at the request of the applicant.

5.2 The Council cannot charge to put the information into a different format where this is required by law, for example, the cost of producing material in Braille as required by the Disability Discrimination Act 1995.

5.3 Harlow Council's disbursement costs are listed at Appendix B

5.4 Fees notices will be issued for any disbursement costs prior to the information being disclosed (see 6). In cases where the total cost is less than £5 these charges will be waived. Above this we will charge the full cost including the initial £5.

### **6. Fees Notices**

6.1 Where charges are indicated, a fees notice will be issued before the request is answered, giving an estimate of the costs involved. The applicant has three months to pay; if payment is not received within three months then Harlow Council does not have to answer the request.

6.2 FOIA requests have to be answered not later than the 20<sup>th</sup> working day following the date of receipt. Where fees apply, the date between the issue of the fees notice and the date when the fee is paid are disregarded in calculating the 20 day deadline.

6.3 EIR requests have to be answered not later than the 20<sup>th</sup> working day following the date of receipt, although this can be extended to 40 working days for requests deemed to be complex or very large. The date between the issue of the fees notice and the date when the fee is paid are disregarded in calculating the 20 day deadline.

6.5 If the actual cost of answering the request is greater than the estimated cost, Harlow Council will bear the additional cost.

6.6 If the actual cost of answering the request is less than the estimated cost charged, Harlow Council will refund the excess if the difference is over £10.

### **7. Combining requests**

7.1 Requests can be combined in specified cases for the purposes of calculating fees where two or more requests for information are made to Harlow Council where:

- they are from the same person, or from different persons who appear to be acting together or in pursuance of a campaign;
- the request relates to the same or similar information;
- the requests have been received within a space of 60 consecutive working days.

7.2 This provision is designed to prevent individuals or organisations undermining the “appropriate limit” by splitting a request into smaller parts.

7.3 Harlow Council will exercise caution when considering whether requests should be combined; decisions will be made about combined requests on a case by case basis.

### **8. Value Added Tax**

8.1 HM Revenue and Customs normally consider that most of the information released under the FOIA, EIR and Data Protection Legislation constitutes a non-business activity where the information could only be provided by a public authority. As such fees and charges will be “outside the scope” of Value Added Tax (VAT). This means that no VAT should be added to fees.

## Access to Information – Fees and Charges Policy

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- 8.2 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.
- 8.3 Basically:
- If the Council is asked for information and the information is only available from the Council or another public authority, any chargeable fees do not attract VAT.
  - If the Council is asked for information that is available from another non-public authority source, any fees do attract VAT.

### Further Information

Further information on the legislation referred in this policy can be found at:

[www.harlow.gov.uk](http://www.harlow.gov.uk) Access to Information

[www.legislation.gov.uk](http://www.legislation.gov.uk) Freedom of Information Act 2000 (FOIA)  
General Data Protection Regulation  
2016/679 (GDPR)  
Environmental Information Regulations 2004 (EIR)  
FOIA and DPA (Appropriate Limit and Fees) Regulations 2004

[www.justice.gov.uk](http://www.justice.gov.uk) Guides on FOIA and DPA

[www.defra.gov.uk](http://www.defra.gov.uk) Guides on EIR

[www.ico.org.uk](http://www.ico.org.uk) Regulatory body for FOIA, Data Protection and EIR

**Appendix A - Definition of Terms used in this Policy**

Appropriate limit	The cost limit set by the Fees Regulation under FOIA.
Disbursement Costs	The cost of physically producing the information and sending it out i.e. photocopying, postage etc.
Environmental Information	<p>The definition of environmental information is very broad and includes information on:</p> <ul style="list-style-type: none"> <li>• The state of the elements of the environment, such as air, water, soil, land, landscape and natural sites, flora and fauna.</li> <li>• the state of human health and safety, conditions of human life, the food chain, cultural sites and built structures in as many as they are or may be affected by the state of the elements of the environment.</li> <li>• Factors affecting the environment, such a substances, energy, noise radiation or waste.</li> <li>• Measures and activities affecting, or intended to protect, the state of the elements, such a policies, legislation, plans, programmes and environmental agreements.</li> <li>• Emissions discharges and other releases into the environment.</li> <li>• Cost-benefit and other economic analysis used in environmental decision-making.</li> </ul>
Exemptions	Some information is exempt from disclosure. Specific exemptions may apply and in some cases it will be necessary to consider the public interest.
Personal information	Information relating to a living and identifiable individual which is biological in a significant sense.
Public interest test	When applying the public interest test, Harlow Council is simply deciding whether in any particular case it serves the interest of the public better to withhold or to disclose the information.
Publication Scheme	A public commitment to make certain information available and a guide to how that information can be obtained.
Reasonably accessible	If there is another route by which someone can obtain information there is no need for Harlow Council under FOIA to provide access e.g. where it is already available by means of other legislation or if it is available via the Council's publication scheme.
Vexatious request	If the main effect of the request would be disproportionate inconvenience or expense then it would be vexatious.

Appendix B – Disbursement Charges

<b>Copying and Printing</b>	<b>Cost per sheet</b>
A4 black and white	£0.10 per printed side
A3 black and white	£0.20 per printed side
A4 colour	£0.50 per printed side
A3 colour	£1.00 per printed side
A2 black and white – plan	£1.00
A1 black and white – plan	£1.50
A0 black and white – plan	£2.00
A2 colour - plan	£2.00
A1 colour – plan	£4.00
A0 colour – plan	£8.00
<b>Formats</b>	
CD Rom	£0.60
<b>Postage</b>	
Standard postal charges will be applicable depending on weight, class and destination	

### Revision History

**Date of this revision:** 15/05/2018

**Date of next planned revision:** 15/05/2019

Revision date	Summary of Changes
25/10/2007	Draft document
07/12/2007	Policy ratified at Policy and Performance Committee 06/12/2007
27/04/2009	Amended job title (V2.0)
05/09/2012	Amended fees charges process. (V3.0)
05/04/2013	Update web address (V4.0)
25/04/2014	Reviewed and updated (V5.0)
15/05/2018	Reviewed and updated (V6.0)