

3. CHARGING FOR THE RELEASE OF OFFICIAL INFORMATION

Once a decision has been made to release some or all of the information that has been requested, an agency may consider whether or not it is reasonable to fix a charge for the provision of that information. There is, however, no requirement that a charge be imposed.

This chapter addresses the following issues:

- ❖ the statutory basis for imposing a charge;
- ❖ what is a reasonable charge;
- ❖ what an agency should do when it intends to impose a charge.

The statutory basis for imposing a charge

Section 15(1A) &(2) of the OIA provides:

- “(1A) Subject to section 24 of this Act, every Department or Minister of the Crown or organisation (including an organisation whose activities are funded in whole or in part by another person) may charge for the supply of official information under this Act.*
- (2) Any charge fixed shall be reasonable and regard may be had to the cost of the labour and materials involved in making the information available to and to any costs incurred pursuant to a request of the applicant to make the information available urgently.”*

Section 13(2) of the LGOIMA is the equivalent provision but is worded differently. It provides:

- “(2) Any charge for the supply of official information under this Act shall not exceed the prescribed amount.”*

“Prescribed amount” is defined in s.2(1) of LGOIMA as follows:

“...in relation to any document or copy of any document provided pursuant to this Act, means the amount determined in accordance with regulations made under this Act”.

No regulations have been made determining the “prescribed amount”. Subsection 3 of s.13 provides:

- “(3) Where no such amount is prescribed, any charge fixed shall be reasonable, and regard may be had to the cost of the labour and materials involved in making the information available and to any costs incurred pursuant to a request of the applicant to make the information available urgently.”*

What is a reasonable charge?

The Ombudsmen have consistently taken the view that charges cannot be fixed for time spent or expenses (including legal expenses) incurred deciding on whether or not, or to what extent, information can be made available. An agency should not consider whether and how much to charge for the release of information until it has decided whether (and to what extent) information can be made available.

This approach is consistent with the principle of availability of official information contained in section 5 of the Act.

The Government Guidelines on Charging (which were last issued by the Ministry of Justice in March 2002) provide a basis for assessing whether a proposed charge is reasonable. These give some guidance on factors which may be relevant when assessing whether it is reasonable to charge for the supply of certain information. These factors include:

- ❖ Staff time used preparing information for release;

- ❖ Photocopying charges and other fixed costs incurred in preparing information for release;
- ❖ Whether payment of a charge might cause the requester financial hardship; and,
- ❖ Whether there is a public interest in the release of the requested information without a charge (and factors to take into account when considering this issue).

The Charging Guidelines are available on the Ministry's website, www.justice.govt.nz, under the heading 'Information and Publications', 'Online Reports and Reviews'.

At a general level, the Ombudsmen have taken the view that the standard charging regime set out in the government guidelines is reasonable. However, in a number of cases, the Ombudsmen have found that agencies, when fixing a charge, have only taken into account the time and the cost of materials in making information available and have failed to take into account other relevant factors, such as the inability of the requester to pay the charge or the public interest in the release of the information.

An agency, and an Ombudsman on review, must consider all the relevant factors when assessing whether a charge is "reasonable" in all the circumstances of the request.

What should an agency do when it intends to impose a charge?

Where an agency decides that information requested can be made available, but that it will impose a charge (which has been assessed in accordance with the Government guidelines) the agency should formally advise the requester of:

- ❖ its decision whether or not to release the information; and
- ❖ the estimated amount (and basis for) any proposed charge; and
- ❖ the right to seek a review by an Ombudsman of the estimated charge.

Where the proposed charge is substantial, it is good administrative practice for an agency to give the requester an opportunity to refine the scope of the request and thereby reduce the charge to be imposed for the information released.

The requester should be advised of the agency's decision "as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received by that [agency]".¹

¹ Section 15(1) OIA; section 13(1) LGOIMA