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Our ref:

18 August 2004

Dear Mr Wood

Freedom of Information Act - Fees

You requested on 14 July, the minutes of the Freedom of Information Practitioners' Group (FOIPG) at which fees were discussed, minutes of the working group on fees and any other documents in which the issue of fees was discussed.

The minutes of the meetings of the FOIPG are very long so I have extracted from the minutes all the discussions about fees and have enclosed them in the attached pages stating which meetings they come from.

In the minutes of the meeting of 11 June 2004 and the 3 August, the information has been redacted as some of the information is exempt from the commitment to provide information under the Code of Practice. It has been redacted in accordance with exemption 2 - Internal discussion and advice: This section contains information whose disclosure could reasonably be expected to harm the frankness and candour of internal discussion and advice, and the possibility of this harm outweighs the public interest in disclosure at this time. However all the other information is in the form that it is found in the complete minutes. You will note that in the information from the June meeting the numbering jumps from (vii) to (x) this was a typing error in the original rather than an unexplained redaction.

Under the Code of Practice on Access to Government Information you may, if dissatisfied, ask us to review the Department for Constitutional Affairs treatment of your request. If you wish to do so, please write to me at Access Rights Unit, Department for Constitutional Affairs, Clive House, 70 Petty France Lane, London SW1H 9HD or email me.

If you should remain dissatisfied following this internal review, the Code provides for you to take your complaint, through a Member of Parliament, to the Parliamentary Commissioner for Administration. Complaints will be investigated at the Ombudsman's discretion.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Yudit Collard Tremblay', written in a cursive style.

Yudit Collard Tremblay
Access Rights Unit

Discussions of Fees at the Freedom of Information Practitioners group meetings

minutes of the FOIPG meeting of the 13 November 2003

6. Other Government Departments' Fee Charging systems

- (1) There was discussion on existing Departmental Fee Charging systems and which Department would take this work forward on behalf of the Group if it was of general interest. The Chair confirmed that DCA would not be producing central guidance on fees charging systems for Government Departments (other than on FOI requests), although that DCA would facilitate discussions on this issue at future meetings of the Group. It was suggested that it would be helpful to produce a baseline of initial thoughts from Departments on charging issues from which members could build. In order to create a draft baseline, the Chair requested information from OGDs on their current charging policies (maximum one page in length) to be sent to Liam Collingridge by Friday 19 December 2003.

Action point: Papers on fee charging systems to be sent to Liam Collingridge at liam.collingridge@dca.gsi.gov.uk (020 7654 3463) by lunchtime on Friday 19 December 2003.

minutes of the FOIPG meeting of the 19 January 2004

2. Matters arising from minutes (not addressed elsewhere)

2.1. Fee Charging Systems - DCA

(i). The group received an update on agenda item 6 of the previous minutes of 13 November 2003. A fee charging baseline paper has been compiled by DCA from contributions received from OGDs on their Departmental Fee charging systems and circulated to the Group. It was agreed that it would be useful to produce a baseline of initial thoughts from all Departments on this issue.

(ii). It was explained that the objective of the paper is to share commonality of experience across Whitehall and to instigate further discussion. The Group were asked to consider how best to take this work forward and who should take the lead.

(iii). It was suggested that this work may overlap with the work on Fees Regulations currently being undertaken by DCA. The Chair confirmed that linkages had already been considered and that the fee working party's remit was narrow in that it was trying to determine what can be charged for and how much should be charged under FOI. The Fee working party was therefore not examining the technical ways in which charges may be made and payment received. However, DCA did confirm that they would be happy to act as clearing-house co-ordinator but would not take the lead.

Action point: All members to consider how to take forward the work on fees charging systems and who should take the lead.

Action Point: DCA to act as clearing-house co-ordinator, as appropriate. _

minutes of the FOIPG meeting of the 1 March 2004

2. Matters arising from minutes (not addressed elsewhere)

(i). The Group returned to the issue of fees charging systems. DCA circulated a paper to the Group and confirmed that they were still awaiting comments and suggestions on who should be taking this issue forward and how best to take it forward.

Action point: Members to feed any comments and suggestions back to the Group.

(ii). It was suggested that the progress of the Fees Regulations working group should drive fees charging. It was also felt that Departments should share their intentions in regard to fees charging so that all Departments can ensure they are keeping in-line.

Action point: DCA to liaise with the Chair of the Fees Regulations working group and discuss the progress of the working group.

minutes of the FOIPG meeting of the 19 April 2004

Minutes of the previous meeting part 1 of agenda

(ii) The Chair announced that DCA had received few comments on the Fees Charging Systems paper. Any further comments were requested as soon as possible.

(iii) The Group were updated that the Fees working group met for the last time on 14 April 2004. DCA will shortly produce and circulate a paper to the Group prior to the next meeting.

Action point: DCA to produce and circulate a paper on fees regulations to the Group by the next meeting.

minutes of the FOIPG meeting of the 11 June 2004

Fees Regulations paper

(i) It was explained that the Government had published its draft fees regulations. However, it was highlighted that under the Act new regulations can be made at an time. (EXEMPTION 2: INTERNAL DISCUSSION AND ADVICE) The options for the charging regime were debated.

(ii) Issues were raised as to whether overseas requesters should be charged the same as domestic requesters.

(iii) DCA clarified that all money collected would go to HM Treasury and not to the individual department,

(iv) The group debated whether departments should be allowed to exercise discretion with their charging systems (EXEMPTION 2: INTERNAL DISCUSSION AND ADVICE)

(v) The Group considered if it would be beneficial to align the FOI charging regime with other charging regimes under Access to Information.

(vi) (EXEMPTION 2: INTERNAL DISCUSSION AND ADVICE)

(vii) The Group asked about charging regimes under the Scottish legislation. It was confirmed that the Scottish legislation was originally drafted in line with the UK legislation but the fees regime was reviewed during the Bill passage. The regime now stands at the first £ 100 free and then 10% there onwards.

(x) (EXEMPTION 2: INTERNAL DISCUSSION AND ADVICE)

(xi) The group's views will be taken into account in preparing advice for ministers about the charging regime (EXEMPTION 2: INTERNAL DISCUSSION AND ADVICE)

Action point: Any further comments should be communicated electronically to Stephen Earl directly at stephen.earl@dca.gsi.gov.uk

minutes of the FOIPG meeting of the 3 August 2004

Fees Policy

i). The group was informed that DCA was still formulating a revised fees policy. The policy had to be defined within the constraints of the Government's commitments to Parliament, administrative viability, comprehensibility to the public, and the financial costs of operating a regime. Members were informed that if they wished to contribute to the development of the fees policy, or had further questions, they should contact Ian Gambles, DCA.

Action Point: All views on the development of the fees policy should be e-mailed to Ian Gambles (Ian.Gambles@dca.gsi.gov.uk) by 17 August 2004.

ii). DCA would also ensure that there were adequate consultations on the policy so as to ensure that its passage through both Houses would not be hindered. It was anticipated that the order would be laid, under the negative resolution procedure, in October 2004.

iii). It was also confirmed that DCA was looking to broadly align the fees regime with the fees for other access regimes.

Action point: DCA to circulate the slides from today's meeting to the group.

iv). It was noted that receipts from FOI fees would go to HM Treasury.

v). DCA confirmed charging fees would be discretionary.

vi). The group enquired as to when they would see an outline of the fees strategy (EXEMPTION 2: INTERNAL DISCUSSION AND ADVICE)

**MINUTES OF THE MEETING OF THE FREEDOM OF INFORMATION WORKING
GROUP DEVELOPING POLICY ON FEES UNDER THE FREEDOM OF INFORMATION
ACT 2000 ON 6 JUNE 2000 AT MILLBANK TOWER.**

Attending

Stephen Earl (LCD)(Chair)
Helen Armstrong (MoD)
Sue Brooks (NAW)
Colin Cuthbert (Met Office)
Maurice Frankel (Advisory Group)
Susan Healey (National Archives)
Mary King (HM Treasury)
Rob Mechan (ICO)
Jill Moorcroft (DoH)
Graham Smith (ICO)
Ann Phillips (DTI)
Charlotte Mercer (LCD)(Secretary)

Welcome and introductions

1. There were apologies from Jayne Boys (DEFRA), Jim Duval (LGA), Kevin Fraser (LCD), Frances Grey (Parliament), Christine Gifford (Advisory Group), Colin Jarman (Hampshire Police), Christine Miles (NHS).

Consideration of draft Fees Regulations

2. The Group considered the formula contained in the draft Regulations relating to 10% of the marginal cost and an upper limit. Some members of the group raised concerns that 10% might not be appropriate as the right of access was available worldwide.
3. It was generally agreed that the £600 limit, mirroring the disproportionate costs response for answers to Parliamentary Questions, provided a workable figure. However, it was noted that this was a Whitehall-centric approach which may not be relevant or directly understood across the whole public sector. Concern was expressed that this was an absolute limit on the right of access without a corresponding public-interest test.
4. The Group agreed that the Fees Regulations must be predicated on a well-organised information management and retrieval system. Additional costs arising from poor records management and contracts with storage services could not be passed on to the requester.
5. The Group expressed some concern over the specificity of a request being used against an applicant where a large volume of material would have to be searched to locate the answer. This could work against authorities encouraging applicants to be specific. Concerns were raised that the deterrent effect of the Fees Regulations should not be abused by authorities wishing to avoid answering basic requests.
6. It was agreed that the definitions of 'prescribed costs' and 'disbursements' needed clarification both in the regulations and any subsequent guidance.
7. It was agreed that guidance would be helpful focussing on the following areas:
 - the distinction between location, identification and retrieval of information;
 - how this affects the charging regime;
 - the impact on charging of deciding whether information can be released, and preparing it for release;
 - how to deal with 'nil return' responses, including where a 'no' answer is helpful, and where it is not. It was suggested that charges for nil returns should be restricted to archive-type searches only;
 - how much effort should the authority put into deciding whether or not the information is held. In particular, guidance is needed on how far the field of search should be limited before any costs are generated;
 - how the aggregation rule should be applied and managed.

- under what situations should no fee be requested;
- whether fees are subject to VAT;
- how fees should be applied to requests falling to be considered under a combination of the Data Protection, Freedom of Information and environmental information access regimes

8. The Lord Chancellor's Department will research past Government commitments on the issues raised, and draft a policy paper for consideration at the next meeting of the Group.

9. The Group queried whether it was also to consider the charging regime under section 69 of the Freedom of Information Act 2000, which extends the Data Protection Act 1998 to unstructured manual records.

10. The Lord Chancellor's Department will check this point and report back to the Group.

The Way Ahead

11. It is anticipated that the Group will need to meet twice more, with the aim of producing an agreed policy paper for the Freedom of Information Practitioner's Group before the end of the year.

Date of next meeting

12. To be arranged for mid-August depending on the availability of suitable accommodation.

**MINUTES OF THE MEETING OF THE FREEDOM OF INFORMATION WORKING
GROUP DEVELOPING POLICY ON FEES UNDER THE FREEDOM OF INFORMATION
ACT 2000 ON FRIDAY 10 OCTOBER 2003 AT THE CONFERENCE ROOM, LOCAL
GOVERNMENT HOUSE**

Attending

Stephen Earl (LCD)(Chair)
Christine Gifford (Advisory Group)
Helen Armstrong (MoD)
Sue Brooks (NAW)
Maurice Frankel (Advisory Group)
Susan Healy (National Archives)
Mary King (HM Treasury)
David Chinchin (ACPO)
Jill Moorcroft (DoH)
Sarah Abbott (DEFRA)
Gill Hoodless (ICO)
Ann Phillips (DTI)

Welcome and introductions

1. There were apologies from Jayne Boys (DEFRA), Jim Duval (LGA), Kevin Fraser (LCD), Frances Grey (Parliament), Jill Moorcroft (DoH) and Jeremy White (NAW).

Minutes of previous meeting

2. The minutes were agreed.

Consideration of policy paper FWG0203

3. The Group considered that giving effect to any preference expressed by the applicant as to the means of communication should form part of the disbursements. The Group asked that consideration be given to defining the meaning of disbursements.

4. Paragraph 16 should be amended to reflect the fact that the cost only applies where the form requested is different from the form in which the information is held.

5. The second bullet point in paragraph 23 should be removed.

6. The Group asked that paragraph 30 of the paper relating to aggregating costs and charges be redrafted to reflect the draft regulations.

7. The Group considered whether section 9(4)(a) be used to disapply the upper cost limit for information which is being released in the public interest.

Guidance on fees

8. The Group agreed the need for guidance to be prepared and discussed some of the issues it might address.

9. The Group asked that the Treasury Guidance on the cost of MPs cases be circulated to members of the Group.

Any other business

9. There was no other business.

Date of next meeting

10. 24 November 2003.

MINUTES OF THE MEETING OF THE FREEDOM OF INFORMATION WORKING GROUP DEVELOPING POLICY ON FEES UNDER THE FREEDOM OF INFORMATION ACT 2000 ON MONDAY, 24 NOVEMBER 2003 AT THE MILLBANK TOWER.

Attending

Stephen Earl (DCA Chair)
Maurice Frankel (Advisory Group)
Susan Healy (National Archives)
Mary King (HM Treasury)
Ann Phillips (DTI)
Jill Moorcroft (DoH)
Gill Hoodless (ICO)
Jeremy White (NAW)
David Chinchon (Met Police)
Jane Lewis (MoD)

1. Welcome and introductions

2. Minutes of Previous Meeting

Jane Lewis pointed out that she had attended the previous meeting. The Group agreed that paragraph 5 from the previous minutes should be deleted.

3. Consideration of Policy Paper FWG0303

3.1 The Group made the following comments on the paper:

- the heading 'Finding the Information' be altered to 'Locating the Likely Files'. The Group agreed the process had two parts:- finding files, which is not chargeable; and finding relevant information in the files, which is chargeable. This was agreed easier to follow as two stages would avoid the public paying for poor record keeping;
- the heading 'Identifying the Specific Information Requested' be altered to 'Retrieving the Specific Information Requested' and 'searched' in the last line be altered to 'sifted';
- the fourth heading be altered to 'Putting the Decision into Effect';
- 'Postage and Packing' be joined by 'Photocopying' as a disbursement;

3.2 The Group agreed with the paper that consideration of exemptions should not be chargeable. This covered the activities of the organisation within itself and third party consultation.

3.3 Concerns were raised with the group that when the upper charge limit of £600 was taken into account, whether this would extinguish the public right to information when redacting charges reached £600 and they could go no further? One option suggested was to exclude the upper limit from redaction charges and set an

appropriate limit plus 10% redaction charges. However, it was argued that an upper limit was needed to give public authorities the right to say no to requests that would be time consuming for their staff. The Group agreed that a system of estimating cost in advance would be needed to assess the time and resources needed.

3.4 The Group agreed that where information is not already in the requested format, then charges should be levied. This applied unless a requester's disability meant a change of format for example, if a hard copy needed to be put in Braille. FOI does not override and disability or minority legislation.

3.5 The Group agreed that postage and packing would be chargeable

3.6 The Group agreed provisionally that there should be no charge for information found and not provided. This brought about debate over bad record keeping. A body should know where information is and whether or not it will be provided, in advance. Refunds would be made for fees paid in advance if applicable.

3.7 The Group generally agreed that there should be no charge for information not found. If a fee was paid in advance, this should be refunded. As above, the issue of the public not paying for bad record keeping occurred. It was the authorities duty to know where records are kept. It was agreed that the issue of refunds needs careful examination and details of this should be made clear to public in charging literature.

3.8 The Group discussed whether or not photocopying is wholly a disbursement and thus chargeable at the full cost rather than 10% of the marginal cost. However, complications arose if an authority overcopies information to boost fees. The Group agreed that photocopying is a marginal cost and should not add to the upper limit.

3.9 The Group asked that draft guidance now be produced summarising the Group's conclusions in order that they may carefully consider the wording used as well as addressing how to calculate charges.

4. Any other business

4.1 The Group considered a couple of suggestions from the Information Commissioner's Office. The first was to have a charging regime similar to that adopted by many bodies covered by the Code of Practice on Access to Government Information. These provided for 1 or more hours of free work followed by a standard charge at £15 or £20 an hour and had the advantage of being consistent across organisations which would be of benefit to the public.

4.2 The second point related to the issue of a fees notice. Section 9 (2) refers only to the provision of a fees notice – was this intended as singular or could a plural interpretation be drawn from it. If the former, then an authority would only be able to issue one fees notice and not to amend this later when it discovered that the cost was far higher (or lower) than estimated.

4.3 DCA undertook to address these points in a further paper for the next meeting.

5. Date of next meeting

**MINUTES OF THE MEETING OF THE FREEDOM OF INFORMATION
ACT WORKING GROUP ON FEES HELD ON 14 APRIL 2004 AT CLIVE
HOUSE**

CHAIR

Steve Earl
Robert Hall (minutes)

ATTENDING

Maurice Frankel (Advisory Group)
Susan Healy (National Archives)
Mary King (HM Treasury)
Arni Narain (HM Treasury)
Kevin Fraser (LCD)
Graham Rowlinson (Dept. Trade and Industry)
Jill Moorcroft (Dept. Health)
Jeremy White (National Assembly of Wales)
David Chinchin (Police)
Frances Grey (Parliament/ HoL)
Simon Murphy (Ministry of Defence)
Phil Boyd (Info Commissioners Office)
Sian Rudgard (Info Commissioners Office)

WELCOME AND APOLOGIES

Apologies from Christine Gifford

REVIEW OF PREVIOUS MEETINGS MINUTES

- Steve apologised for certain topics that had been missed out from these minutes and should have been included. There were no further comments.

CONSIDERATION OF THE MAIN FEES ISSUES

- Steve introduced the agenda by outlining 3 possible fees regimes, 1 10% of final costs, 2 an agreed hourly rate, 3 a flat rate of £25
- Treasury raised concerns that cross-departmental efficiency & money-saving measures will have a large effect on the consideration of fees by senior ministers
- Steve cautioned that inter-departmental discussions must not detract from the issue of costings and the need for a certain level of subsidy should be emphasised. This was generally agreed to by the Group and examples of other Acts which had been provided a subsidy in the past were cited. Although general subsidies were rare and selective subsidy was agreed to as an option
- Group discussed the issue of defining what is meant by 'reasonably accessible' and agreed that a general level of common sense ought to be applied to this when considering fees.
- The Group was reminded that the Working Group was an advisory tool to the Government on this issue and although should set out the fees options available, in a very clear format, were not responsible for setting policy in place.
- Group agreed that costs should be broken down into 'recoverable' and 'non-recoverable' before considering options
- The Group agreed to propose no more than 5 options. Steve reminded the Group that there was no compunction to charge under the Freedom of Information Act
- The group discussed issues that would be addressed by the next stage of committees considering the paper. For example, would there be extra charges for foreign enquirers (to avoid the UK taxpayer

funding all non-domestic enquiries as well), Would there be a standard across the board charge for all public authorities bearing in mind the value for money factor considering the level of information obtainable from a local doctors surgery for £15 per hour as compared to that from a large government department for the same rate. The suggestion was mooted that the percentage charge would be better than an hourly rate

- Steve pointed out that no matter whether the Hourly rate or percentage option were chosen, there would be difficulties to overcome and that both options should be put to the government.

CONSIDERATION OF THE PAPER

Paragraph 53 – The Group agreed that the subject of whether or not to charge for ‘finding Information’ should be investigated deeply. The general consensus was ‘no’ except in the case of the National Archives. (Steve to arrange a separate meeting with Susan Healy to discuss this). Info Commissioners Office cautioned that the charging regime must not be an incentive for poor record keeping within certain public bodies in order to avoid providing information. Also it was pointed out that many Section 5 authorities were not yet aware of their potential FOI obligations and this needed amending in order for them to reorganise their filing systems. In conclusion on this topic it was agreed that ‘Finding the Information’ and ‘Identifying the Specific Information Requested’ should be combined when considering the application of fees.

- The Group agreed that there should be no charge for considering exemptions as this could lead to authorities exceeding the Upper Limit of £600 and the realistically for the Government to go back on such policy decisions it had already made would be too damaging at this stage
- There was discussion on the issue of charging for redaction. Some were concerned that the time taken to redact an item of information would detract from normal duties and therefore should be chargeable.
- Steve pointed out that the sums of money involved were too small to become bogged down with at this stage and were best left until Guidance Drafting stage.
- The Group agreed to add ‘& photocopying’ to the ‘Disbursements’ section and otherwise agreed with all the other definitions under Paragraph 53

Charging Regime (Paragraph 54) – The 5 Fees options were outlined as – Full Cost; Percentage of Cost; Fixed Hourly Rate; Flexible Hourly Rate; and Fixed Charge. None of these were to include ‘consideration of exemptions’ and do recognise some level of subsidy.

Flat Fee of £25 – Steve confirmed this new option had been suggested by a major Government Department and would need to be considered amongst the options as mandatory. This would introduce a flat fee to charge for access, which would be consistent and applicable to everyone. This was acknowledged accordingly.

- The Group agreed to point out to the next stage of decision makers that the main options approved of were the flexible hourly rate and the percentage options.

Paragraph 18 / Trading Funds – Steve introduced this topic which the Group agreed was reasonably accessible Again Steve agreed to meet with the National Archives Representative to discuss fee separately in relation to this issue

CONCLUSION

Steve thanked the Group for their time and co-operation over the past few months on this subject. Steve concluded that the next stage was to take this subject to outside bodies for their consideration and input