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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 467**

**FREEDOM OF INFORMATION**

**The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004**

*Made - - - - 26th October 2004*

*Coming into force - - 1st January 2005*

The Scottish Ministers, in exercise of the powers conferred on them by sections 9(4) and (5) and 12 of the Freedom of Information (Scotland) Act 2002<sup>(1)</sup> and of all other powers enabling them in that behalf, after consulting the Scottish Information Commissioner in accordance with sections 9(6) and 12(5) of that Act, hereby make the following Regulations, a draft of which has, in accordance with section 72(2)(b) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004.

(2) These Regulations shall come into force on 1st January 2005.

**Interpretation**

2. In these Regulations—

“the Act” means the Freedom of Information (Scotland) Act 2002;

“prescribed amount” means the amount prescribed in regulation 5; and

“projected costs” has the meaning set out in regulation 3.

**Projected costs**

3.—(1) In these Regulations, “projected costs” in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.

(2) In estimating projected costs—

(a) no account shall be taken of costs incurred in determining—

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(1) 2002 asp 13.

- (i) whether the authority holds the information specified in the request; or
  - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
- (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

#### **Fee payable**

4.—(1) For the purposes of section 9(1) of the Act (fees), the fee which a Scottish public authority may charge is to be determined in accordance with paragraphs (2) to (4).

(2) Where the projected costs do not exceed £100, no fee shall be payable.

(3) Where the projected costs exceed £100 but do not exceed the prescribed amount, the fee shall not exceed 10% of the difference between the projected costs and £100.

(4) The fees notice shall set out the manner in which the fee has been calculated.

#### **Excessive cost – prescribed amount**

5. The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.

#### **Aggregation of costs**

6. Where two or more requests for information are made to a Scottish public authority by different persons, the authority need not comply with either or any of those requests where—

- (a) the information sought in the requests covers the same subject matter or overlaps to a significant extent;
- (b) the authority estimates that the total cost of complying with both or all of the requests would exceed the prescribed amount;
- (c) the authority considers that it would be reasonable to make the information available to the public at large and elects to do so;
- (d) within 20 working days of receipt by it of the first of the requests the authority notifies each of the persons making the requests that the information is to be made available in accordance with paragraph (e); and
- (e) the authority makes the information available to the public at large within the period specified in paragraph (d).

St Andrew's House, Edinburgh  
26th October 2004

*MARGARET CURRAN*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the fees which may be charged by a Scottish public authority for disclosure of information which it is required to make under the Freedom of Information (Scotland) Act 2002 (“the Act”).

The fee which is payable is calculated by reference to the “projected costs”. Regulation 3 sets out how these are calculated. The authority must estimate the likely cost of locating, retrieving and providing the requested information in accordance with the requirements of the Act. The authority’s estimate will therefore reflect the cost of complying with a request from an applicant to be given information by a particular means where the authority is required to do so by section 11 of the Act. Projected costs do not include costs incurred by the authority in determining whether it holds the information or whether the applicant should be given it. The cost of staff time is capped at a maximum of £15 per hour per member of staff.

Regulation 4 provides for the calculation of the fee which may be charged.

Section 12(1) of the Act provides that no disclosure need be made where the cost exceeds the prescribed amount. Regulation 5 provides that the prescribed amount is £600. The Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations ([S.S.I. 2004/376](#)) make provision for the fees which may be charged in such a case.

Regulation 6 enables an authority to refuse to disclose information where two or more people seek essentially the same information and the cost of disclosure would exceed the prescribed amount. The authority need not disclose to the applicants so long as it makes it available to the public within 20 working days of the first request and notifies all the applicants within that time limit that it is doing so.