

2004 No. 3244

FREEDOM OF INFORMATION

DATA PROTECTION

**The Freedom of Information and Data Protection (Appropriate
Limit and Fees) Regulations 2004**

Made - - - - *7th December 2004*

Laid before Parliament *9th December 2004*

Coming into force - - *1st January 2005*

The Secretary of State, in exercise of the powers conferred upon him by sections 9(3) and (4), 12(3), (4) and (5), and 13(1) and (2) of the Freedom of Information Act 2000^(a), and by sections 9A(5) and 67(2) of the Data Protection Act 1998^(b), and having consulted the Information Commissioner in accordance with section 67(3) of the Data Protection Act 1998, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 and come into force on 1st January 2005.

Interpretation

2. In these Regulations—
“the 2000 Act” means the Freedom of Information Act 2000;
“the 1998 Act” means the Data Protection Act 1998; and
“the appropriate limit” is to be construed in accordance with the provision made in regulation 3.

The appropriate limit

3.—(1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.

(a) 2000 c. 36.

(b) 1998 c. 29. Section 9A of the Data Protection Act 1998 was inserted by section 69(2) of the Freedom of Information Act 2000.

Estimating the cost of complying with a request – general

4.—(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request—

- (a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act^(a), and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or
- (b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in—

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

Estimating the cost of complying with a request – aggregation of related requests

5.—(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority—

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which—

- (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and
- (b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971^(b) in any part of the United Kingdom.

Maximum fee for complying with section 1(1) of the 2000 Act

6.—(1) Any fee to be charged under section 9 of the 2000 Act by a public authority to whom a request for information is made is not to exceed the maximum determined by the public authority in accordance with this regulation.

(2) Subject to paragraph (4), the maximum fee is a sum equivalent to the total costs the public authority reasonably expects to incur in relation to the request in—

(a) Section 9A(6) of the Data Protection Act 1998 provides that any estimate of the appropriate limit for the purposes of that section must be made in accordance with regulations made under section 12(5) of the Freedom of Information Act 2000.
(b) 1971 c.80.

- (a) informing the person making the request whether it holds the information, and
 - (b) communicating the information to the person making the request.
- (3) Costs which may be taken into account by a public authority for the purposes of this regulation include, but are not limited to, the costs of—
- (a) complying with any obligation under section 11(1) of the 2000 Act as to the means or form of communicating the information,
 - (b) reproducing any document containing the information, and
 - (c) postage and other forms of transmitting the information.
- (4) But a public authority may not take into account for the purposes of this regulation any costs which are attributable to the time which persons undertaking activities mentioned in paragraph (2) on behalf of the authority are expected to spend on those activities.

Maximum fee for communication of information under section 13 of the 2000 Act

7.—(1) Any fee to be charged under section 13 of the 2000 Act by a public authority to whom a request for information is made is not to exceed the maximum determined by a public authority in accordance with this regulation.

- (2) The maximum fee is a sum equivalent to the total of—
- (a) the costs which the public authority may take into account under regulation 4 in relation to that request, and
 - (b) the costs it reasonably expects to incur in relation to the request in—
 - (i) informing the person making the request whether it holds the information, and
 - (ii) communicating the information to the person making the request.

(3) But a public authority is to disregard, for the purposes of paragraph(2)(a), any costs which it may take into account under regulation 4 solely by virtue of the provision made by regulation 5.

(4) Costs which may be taken into account by a public authority for the purposes of paragraph (2)(b) include, but are not limited to, the costs of—

- (a) giving effect to any preference expressed by the person making the request as to the means or form of communicating the information,
- (b) reproducing any document containing the information, and
- (c) postage and other forms of transmitting the information.

(5) For the purposes of this regulation, the provision for the estimation of costs made by regulation 4(4) is to be taken to apply to the costs mentioned in paragraph (2)(b) as it does to the costs mentioned in regulation 4(3).

Signatory text

Baroness C Ashton
Parliamentary Under Secretary of State
Department for Constitutional Affairs

Date 7th December 2004

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations prescribe “the appropriate amount” for the purposes of section 9A of the Data Protection Act 1998 and section 12 of the Freedom of Information Act 2000. If a public authority estimates that the cost of complying with a request for the information to which either of those provisions applies would exceed the appropriate amount, then the obligations which would otherwise be imposed by section 7 of the 1998 Act and section 1 of the 2000 Act in respect of such requests for information do not apply.

Regulation 3 prescribes an appropriate limit of £600 in the case of the public bodies listed in Part I of Schedule 1 to the 2000 Act (including government departments). An appropriate limit of £450 is prescribed in relation to all other public authorities.

Regulation 4 makes provision as to the costs to be estimated, and as to the manner in which they are to be estimated, for the purpose of estimating whether the cost of complying with a request would exceed the appropriate limit. The costs which may be taken into account are limited to those which the public authority reasonably expects to incur in undertaking certain specified activities in response to the request. Regulation 5 makes supplementary provision as to the estimation of costs in cases to which the 2000 Act applies. It provides that in relation to multiple requests which are related in specified ways by reference to those making the requests, the information to which the requests relate, and the timing of the requests, the estimated costs of complying with any single request is to be taken to be the aggregate estimated costs of complying with them all.

Regulation 6 makes provision as to the maximum fee that a public authority may specify in a fees notice under section 9 of the 2000 Act as a charge for complying with its duty under section 1(1) of the Act. The maximum is to be calculated by reference to specified limited aspects of the costs of informing the requester whether it holds the information and, if so, of communicating it to the requester.

Section 13 of the 2000 Act makes new provision for public authorities to be able to charge for the communication of information whose communication is not required because of the effect of the appropriate limit and is not otherwise required by law. Regulation 7 makes provision as to the maximum fee that a public authority may charge for the communication of information in the exercise of that power. The maximum is to be calculated by reference to the total costs which may be taken into account in estimating whether the cost of complying with the request would exceed the appropriate limit (excluding any costs “aggregated” from other requests), together with the full costs of informing the requester whether the information is held, and, if so, of communicating it to the requester.

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