

Supplementary Paper: Consultation on the Draft Freedom of Information and Data Protection (Appropriate Limit and Fees Regulations) 2007 28/06

Introduction

1. This supplementary paper seeks further comments on the draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007, which it is proposed will revoke the 2004 Regulations of the same name. It should be read together with the full Consultation Paper CP 28/06 and accompanying Partial Regulatory Impact Assessment which were issued by the Department on 14 December 2006¹.
2. This paper invites views on the principle of amending the 2004 Regulations but also any further views on the draft Regulations themselves as set out in the full consultation paper. Specifically, views are sought on whether the 2004 Regulations should be amended to deal with the identified problem of requests which are disproportionately burdensome on public authority resources. This supplementary consultation is aimed at members of the public, public authorities, the media, and campaign groups who have an interest in the proposed changes.

Background

3. The Government stated in February 2005 that the Fees Regulations² would be reviewed within 12-18 months of the Act coming into force so that lessons could be learnt from its practical operation.
4. In light of the Government's commitment, the Department for Constitutional Affairs (DCA) commissioned an independent economic review³ of the impact of the Act⁴. The review's terms of reference set out two issues to be examined in detail:
 - the cost of delivering FoI across central government and the wider public sector, alongside an assessment of the key cost drivers of FoI; and
 - an examination of options for changes to the current fee regime for FoI.

¹ See <http://www.dca.gov.uk/consult/dpr2007/cp2806.htm>.

² The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (S.I 2004/3244). See <http://www.opsi.gov.uk/SI/si2004/20043244.htm>.

³ This was conducted by economic consultancy Frontier Economics <http://www.foi.gov.uk/reference/foi-independent-review.pdf>).

⁴ The review looked at the total costs involved, and was not limited to those costs that can be counted towards the fees limit.

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5. The review was completed in October 2006 (see <http://www.foi.gov.uk/reference/foi-independent-review.pdf>). It found that a key issue in terms of the cost of dealing with information requests was the number of very expensive requests that public authorities are obliged to process under the 2004 Regulations. A small percentage of requests and requesters were found to place disproportionate resource burdens on public authorities, particularly in terms of officials' time. Approximately 5% of central government requests cost more than £1000 and account for more than 45% of the costs of time spent dealing with initial requests. These requests tend to take almost seven times longer than average to complete. By contrast, 61% of requests cost less than £100 to deliver and account for less than 10% of total costs.

6. The costs of the 5% of very high burden requests were found to be to a large extent driven by the costs in officials' time. The time that public authorities spend dealing with those requests constitutes time away from their other public service duties. While the Government believes that it is entirely right that officials should spend a reasonable amount of time dealing with requests for information, it is concerned that the 2004 Regulations may not allow public authorities to strike the right balance between complying with their duties under the Act to provide access to information, and delivering their other public service duties.

7. The review also found that a small number of requesters who use the Act very regularly account for a substantial proportion of the overall costs of delivering Freedom of Information. They account for 14% of requests by volume and 26% by value. Requests made by these users tend to cost substantially more than standard requests and take up substantial levels of resources.

8. The review explored options for amending the Fees Regulations. It found that including reading, consideration and consultation time in calculations of the appropriate limit, as well as allowing aggregation of non-similar requests, would have the greatest impact in reducing the most resource-intensive requests, while ensuring that the large majority of requests for information were not affected.

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9. Following the conclusions of the review, the Government announced that it was minded to change the Fees Regulations to allow public authorities to:
- include reading time, consideration time and consultation time in the calculation of the appropriate limit above which requests could be refused on cost grounds; and
 - aggregate requests made by any person or persons apparently acting in concert, to each public authority for the purposes of calculating the appropriate limit.
10. The Government also announced that it was **not** minded to agree the following:
- a flat fee for all requests; and
 - a reduction in the appropriate limit to £400.
11. The Government considered the responses to this announcement, and developed proposals which it considered addressed many of the points made in the comments received. It published a set of draft regulations for consultation on 14 December 2006. The draft Regulations would give effect to the changes which the government had announced that it was minded to make, but also contain important qualifications designed to strike an appropriate balance between access to information and the delivery of public services.
12. The intention of the changes proposed is not to hinder legitimate requests for information or to reduce the effectiveness of the Act. The Act provides for a limit on the costs that a public authority must bear when answering a request for information (called 'the appropriate limit'). If a public authority estimates that it will cost more than the 'appropriate limit' to comply with a request, it may refuse the request entirely; or it may choose to provide information anyway, in which case it may ask the applicant to pay towards the cost.
13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations set the 'appropriate limit' and describe how this should be calculated. They also set out the maximum fee that can be charged when the cost of answering a request exceeds the 'appropriate limit'. The 'appropriate limit' under

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the existing and draft Regulations is £600 for requests to central government and £450 for requests to any other public authority.

14. It is important to note the changes proposed in the consultation document would not remove the obligation on public authorities to provide advice and assistance with a view to bringing such requests below the appropriate limit. Furthermore, nothing in the draft Regulations would alter the existing rights of appeal under the Freedom of Information Act. A requester would still be able to complain to the Information Commissioner that a public authority's cost estimate was not reasonable.

Supplementary Consultation

15. There have been over 200 responses to the consultation exercise, which closed on 08 March 2007, with a wide range of comments received. The responses to the consultation exercise will be published along with any responses to this paper in due course. Some of the responses received have commented on the principle of making these changes and other responses have stated they would have welcomed an opportunity to comment on the principle of the changes or have suggested that there may be better ways of tackling those cases which create a disproportionate burden on public authorities.
16. The Government wishes to make clear that it is keen to hear all those views, and it has therefore decided to issue this supplementary paper extending the original consultation. The Government invites responses on the points set out in this document and also any other general comments on the principle of making changes to the existing regulations or ways of tackling the problems identified. Those who wish to comment are asked to do so by 21 June 2007.

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Questions:

1. Do you agree that the FOI Fees Regulations should be amended to deal with the problem of disproportionately burdensome requests?
2. Do you consider that the draft regulations attached to consultation paper CP 28/06 would succeed in dealing with the problem? If not do you have any other suggestions for dealing with disproportionately burdensome requests?
3. Do you wish to make any other comments on the principles or details of the proposals set out in consultation paper CP 28/06?

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (eg. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	(please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

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How to respond

Please send your response by 21 June 2007 to:

**Department for Constitutional Affairs
Information Rights Division
6.16 Selborne House
54-60 Victoria Street
London
SW1E 6QW
Tel: 020 7210 8034
Fax: 020 7201 7777
Email: IRDconsultation@dca.gsi.gov.uk**

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.dca.gov.uk/index.htm>

Publication of response

A paper summarising the responses to this consultation will be published. The response paper will be available on-line at <http://www.dca.gov.uk/index.htm>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

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