Environmental Information Regulations (EIR) 2004

Fees Charging policy.

When the Council will charge for requests involving large amounts of environmental information – paper or electronic format

Version control 1.0

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Policy

Summary

Purpose

This policy and procedure set out when Warwick District Could will charge for particularly complex requests for Environmental Information under the Environmental Information Regulations 2004 (EIR). Complex means any request that will take more than 3.5 hours to locate, extract and collate the information requested. This includes requests where information is requested in electronic or paper format.

Nothing in this policy or procedure is intended to detract from the overriding duty to release Environmental Information or prevent engaging the "Manifestly Unreasonable" exception where appropriate.

Distribution - who needs to be aware of this policy?

This Policy applies to all employees of Warwick District Council (WDC) including elected Members, contract, agency and temporary staff, volunteers, and employees of partner organisations working for the Council. It also applies to information held o by contractors for the Council.

The EIR Charging Policy applies to all environmental information held by the Council, which may fall under the EIR, including information which is held on behalf of another person. The EIR Charging Policy also applies to information held by another person on behalf of the Council, including information held by contractors and partner organisations on the Council's behalf.

Context

Background - why this policy is needed?

The EIR give rights of public access to information held by public authorities. The aim of the EIR is to ensure comprehensive access to environmental information.

Unlike The Freedom of Information Act 2000 (FOIA), which identifies a fixed rate of charges to be applied in certain situations specified in the legislation, there is no similar fixed rate for EIR. The EIR allows public authorities to charge for making environmental information available, but any charge must be "reasonable". The Information Commissioner (ICO) states that any charges should be compatible with encouraging transparency and should not be an obstacle to such access.

In general, a reasonable charge may include the disbursements costs in transferring the information to the applicant, whether electronically or in paper format , and the staff time taken to locate the information.

This policy sets the charging regime for the Council laid out in Regulation 8 of the EIR and, in particular, what constitutes a "reasonable amount" for a fees request. As a general rule, the charges should not exceed the actual costs of producing the material in question. The purpose of charging is to recover the costs incurred in complying with requests and managing demand.

Objectives

In light of updated guidance from the ICO regarding "Charging for Environmental Information", this policy sets out WDC's process for charging for EIR requests.

Scope – what the policy covers

This policy relates to information requests processed under the Environmental Information Regulations 2004 (EIR). If the information is not environmental information, the EIR Regulations are not relevant, and public authorities will instead need to consider the charging regime under FOI.

Procedure

What is Environmental Information?

Only environmental information can be charged for under this policy. Where a request is logged under FOIA, this does not prevent the request being dealt with under EIR where it becomes apparent that this is the correct regime.

Guidance on the definition of Environmental Information is available via the Information Commissioner's Website –
Regulation 2(1) - What is environmental information? | ICO

What can be charged?

There are two types of activity under EIR that public authorities can charge for:

1) The cost of staff time (salary and overheads), time spent locating, retrieving and extracting the information, and converting the documents for disclosure;
2) The costs incurred when printing or copying the information and sending to the applicant.

The Council must be able to demonstrate why a charge in a particular case is reasonable. The Council should provide a breakdown of charges so the requestor can understand the basis for the fee. Staff should use the Council's "EIR Charging Template" (Appendix A) to demonstrate this.

What cannot be charged for?

There are three costs the Council cannot charge for:

1) the costs of maintaining a register of information or a database;
2) overhead costs (e.g. wider staff overheads);

3) staff time spent reading and redacting information (although there are cases where staff time in this instance can be taken into account when considering if a request is Vexatious/Manifestly unreasonable due to excessive burden on staff resource and time).

In addition, the ICO is clear that requestors should not be unfairly penalised in cases where the authority has failed to keep records in a reasonably accessible state.

Therefore, where systems prevent easy access to information purely because of records management issues, staff should consider whether it is appropriate to charge.

The Council cannot charge applicants for inspecting the information or accessing public registers or lists of environmental information.

The Council cannot make a charge specifically for allowing access to the information available at the Council offices. However, the EIR Regs do allow the Council to make a charge to recover the costs of locating the information and collating it in order to make it available for inspection. A charge made for locating and collating information to be inspected must be 'reasonable'. EIR allows the authority to make a charge if a requestor asks for inspection of material that would require a significant cost to prepare for inspection.

Schedule of Charges

Public authorities **must** have a published schedule of charges in order to be able to charge applicants for environmental information. The Council's current schedule of charges on the Council's website and in Appendix B to the Policy.

This is calculated on actual staffing costs to the Council.

Where the Council sends the information in paper format it will make a charge in accordance with Appendices B and C; Formatting/Printing Costs and Postage Costs below.

Any Other costs will be charged in line with WDC's published Fees and Charges.

Charging Threshold

The authority will only charge for EIR requests where the time taken to comply with the request is estimated to exceed 3.5 hours. The current FOI system allows for recording estimated time to complete and actual time to complete. Alternatively staff may use the Council's "EIR Charging Template" (Appendix A) to estimate how long it will take to comply with a request. If complying with a request will exceed the 3.5-hour threshold, the requestor may be charged for the total number of hours it takes to complete the request above the first 3.5 hours.

Manifestly Unreasonable

Where it is estimated that complying with a request will exceed the 3.5 hour limit, officers may consider whether the request is in fact Manifestly Unreasonable under Regulation 12(4)(b) of the EIR. Officers will consider whether other exemptions apply, including the public interest test and the necessity to provide advice and assistance to the requestor in order to assist them in narrowing the scope of their request.

However, other factors will be considered in line with the ICO Guidance on Regulation 12(4)(b).

Issuing a Charge

The decision to issue an EIR charge needs to be made promptly. It will normally be made within 10 working days of the receipt of the request, or at any rate within the first 20 days as required by legislation. To issue an EIR charge, the EIR Fees Notice Letter (Appendix D) will be sent to the requestor, which informs the requestor that a fee is payable; how the fee was calculated; how to make payment; how long the requestor has to make a payment; and, if they are concerned about the level of costs, gives the requestor the option of clarifying their request.

Advance Payment

In all cases where a fee is charged, payment will be required in advance of disclosure. The fee charged will be based on an estimated cost calculated from the completion of the Charging Template. Requestors will have 60 days for payment to reach the Council. Where payment is not received, it will be assumed that the information is no longer required and the request terminated.

Details of how to make the payment, will be provided to the requester.

Refunds

If the actual cost of complying with the request turns out to be less than the estimate, the balance will be returned to the requestor where it exceeds £10.

Affordability Issues

The Council recognises that paying a charge will not be financially viable for some people, notwithstanding the requirement to consider the Public Interest Test. The Council will therefore offer requestors reasonable advice and assistance in order to help them narrow down the scope of their request, to bring them within the 3.5 hour charging threshold.

Policy management

The Information Governance Team is responsible for implementing and managing the policy, in conjunction with relevant services and partners.

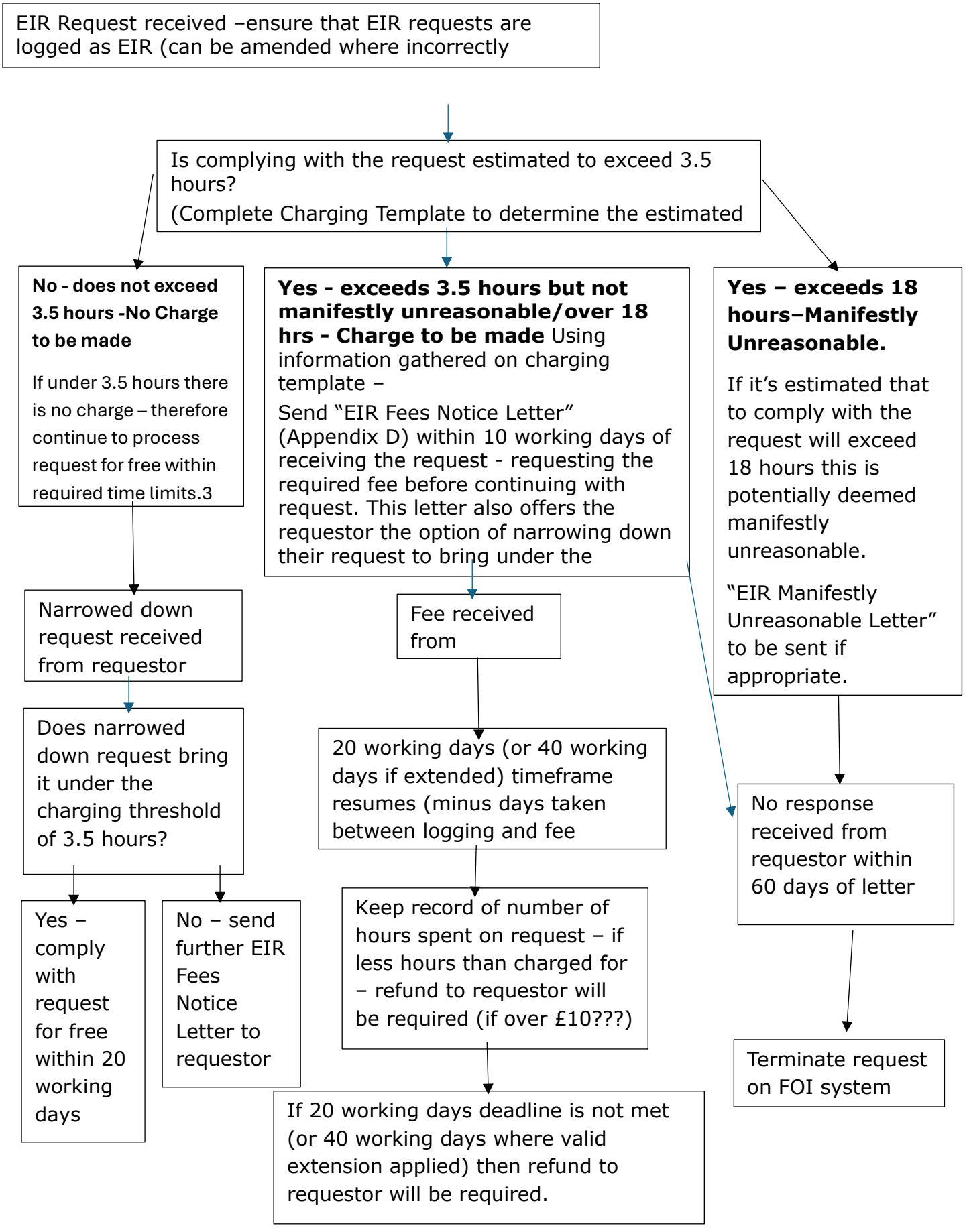
How the impact of the policy will be measured

- Monitor volume of EIR requests received and completed once the charging policy introduced
- Number of EIR requests "withdrawn" or clarified once charges requested
- Costs recouped by the Council as a result of this policy.

Evaluation and review

This fees within the Policy will be reviewed annually, the policy and procedure will be reviewed every two years and subject to on-going review in light of any changes in legislation or good practice.

Environmental Information Regulations (EIR) Charging Flowchart



Appendix A EIR Charging Estimates

Please consider these two questions before beginning response:

Ref No: Click to enter EIR Ref No:. Officer Completed: Click or tap here to enter text.

1. Does request exceed the "threshold" of 3.5 hours to process? (Please complete template)

All tasks are charged at £38.62 per hour

Charging Element	**Hours & minutes**	**Cost**
Reviewing e-mails (**2 minutes for short emails** and **4 minutes for long emails:** How many e-mails?)		
File checks (5 minutes per document: How many documents?)		
Other document checks, hard copies etc. (5 minutes per document: How many documents need to be checked?)		
3rd Party Consultation: discussions/consultations with any 3rd party. (15 minutes per 3rd party: How many discussions are needed?)		
Liaison with other Council Officers (30 minutes per officer: How many officers will need to be spoken to?)		
Legal Advice – 15 to 30 minutes depending on query.		
'Mail Box/network' search (time will be confirmed once information has been submitted to It for review)		
Discussing the request with other 'Key Officers' (**15 minutes per officer**: Number of officers involved?)		
Complaints & FOI Team **log processing the request. (15 minutes** per request**)**		

Final 'sign off'. (15 minutes – to include preparing the response beforehand**)**		
Other Possible charges		
Time taken to determine whether the council **holds** the information – if not included above		
Time taken to **locate** the information – if not included above		
Time taken to **retrieve** the information (e.g. from storage) – if not included above		
Time taken to **extract** the relevant information from larger documents – if not included above (not including editing/redaction)		
Other		
(Is there anything else apart from the above charging elements that need to be considered?)		
Total		£

2.If the request does exceed the threshold of 3.5 hours, how could the applicant narrow down their request to bring it under the limit? Please give details below so that they can be suggested to the applicant.

Click or tap here to enter text.

If not, should the council charge any disbursement costs for supplying information?

(Please complete template)

Appendix B Formatting/Printing Costs (if applicable)

		Item charges
USB memory stick (+ encryption)	At cost plus £10 admin Charge	
Photocopying charges:		
A0 Plans,	Black & White £1.00 Colour £8.00£6.00 per sheet	
A3 Double sided	Black & White £1.00 Colour £8.00	
A3 Single sided	Black & White £0.50 Colour £4.00	
A4 double sided	Black & White £0.60 Colour £3.00	
A4 Single sided	Black & White £0.30 Colour £1.50	
Secure WDC download website	£10 admin charge	
Total Costs		

Please note that the above has been prepared in accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations)

Appendix C – Postage Costs (if applicable)

		Item charges
Postal (admin) charge for sending copies	£10 plus postage at cost	
Total Disbursement Charges		

Appendix D: SAMPLE LETTER

Our ref enter EIR number.

Email Choose an item.
Date Click enter a date.

Name

Address

Email (if applicable)

Dear title surname,

Your request under the Environmental Information Regulations 2004 [EIR] [Ref No:]

Thank you for your information request dated Click or tap to enter a date.

You have already been informed that much of the information you requested is in the public domain and available on our website/available to view at our offices. However, you have still requested copies in electronic/paper format.

We aim to respond to all requests as fully and promptly as possible and in any event within the 20 working days set out in the EIR.

However, where the type of information being requested causes a burden on resources and staff time, the Council will consider applying a charge on supplying some types of environmental information. This applies to your request. Therefore, in accordance with the Council's Policy, as the amount of work involved in processing your request will exceed 3.5 hours, a fee is payable before the Council provides the requested information.

We have estimated that the cost will be Click to enter cost. This cost will cover the cost of staff time spent locating, retrieving and extracting the information. It will also include all the disbursement costs, for example, photocopying and postage if required in paper format. If the actual cost turns out to be less than the estimate, the balance will be returned to you if it exceeds £10.

Payment is required before continuing processing your request. The EIR allows 20 working days to respond to a request from the date of its receipt (extendable to 40 working days in some instances). This time limit is suspended until payment is received and once received work will continue work on processing your request.

If we do not hear from you within 40 working days of this letter then we will assume that you no longer require the information and we will close the request.

Should this occur, then you will need to re-submit your request if you still require the information.

Payment can be made by cheque payable to Warwick District Council, or at the Council Offices.

Unfortunately, payments cannot currently be made online. When making the payment please quote **EIR Ref Number** and **ledger code** and advise the person taking the payment that it is in relation to your EIR request.

Or:

We can provide the following information without a charge but any further time spent on your request would exceed the 3.5 hour limit:- [Detail information which can be provided within the threshold]:

Please contact foi@warwickdc.gov.uk to let us know if you would like us to proceed with your request in this way.

If you are dissatisfied with this response the Commissioner's Office recommends that you first refer the matter to the Council. You can do this by writing to foi@warwickdc.gov.uk asking for an internal review of my decision. If you wish the Council to undertake an internal review, then you must write to the Council within 40 working days of the date of this letter. We will not consider any requests received after this date unless there are exceptional circumstances for the delay.

You have a right to appeal to the Information Commissioner's Office at the following address: Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Or Make a complaint | ICO

Yours sincerely