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State Records  
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# FOI and the Charging of Fees

Guideline

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## Table of Contents

<b>Introduction .....</b>	<b>3</b>
<b>Purpose.....</b>	<b>3</b>
<b>Fees and charges.....</b>	<b>4</b>
<b>Fee waiver, reduction or remission .....</b>	<b>4</b>
<b>Consistency of charging .....</b>	<b>5</b>
<b>Members of Parliament.....</b>	<b>5</b>
<b>Personal affairs .....</b>	<b>5</b>
<b>Advance deposits .....</b>	<b>6</b>
<b>FOIMS.....</b>	<b>6</b>
<b>GST.....</b>	<b>6</b>
<b>For more information.....</b>	<b>6</b>



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## Introduction

The *Freedom of Information Act 1991* (FOI Act) confers upon members of the public and Members of Parliament a legally enforceable right to access information held by Government agencies, subject to certain exemptions.

State Records supports the Minister responsible for the administration of the FOI Act. This includes policy and legislative advice, the development of information sheets and guides, regular and ad hoc reporting, the management of the Freedom of Information Management System (FOIMS) and responding to enquiries from members of the public and agencies in relation to FOI.

Fees and charges payable for the purposes of the FOI Act are set out in Schedule 1 of the *Freedom of Information (Fees and Charges) Regulations 2003* (Regulations).

## Purpose

The purpose of this guideline is to:

- clarify the fees and charges in the Regulations
- promote consistency in the application of fees and charges across State Government agencies.

## Fees and charges

Section 53 states, that subject to certain exemptions, fees and charges must reflect the reasonable administrative costs incurred by agencies in exercising their functions under the FOI Act. In 2008/09 the cost of administering the FOI Act was estimated to be \$5.3 million. This includes providing access, reporting, consultations, seeking advice and training.

Section 53(2aa) states that fees and charges can only be required by an agency for:

- finding, sorting, compiling and copying documents
- undertaking any consultation required by the FOI Act.

Other government gazetted fees for providing access to documents, not related to FOI, cannot be charged under the FOI Act.

An agency cannot require a fee or charge for:

- obtaining legal advice
- consultation that is not required by the FOI Act (eg liaising with staff within their own agency or from other State Government agencies)
- a review of a fee or charge determined by the agency, or
- an application to amend personal information by the person concerned.

More information about the calculation of fees and charges can be found in the FOI fees and charges information sheet available on the State Records website.

## Fee waiver, reduction or remission

Section 53 ensures that financially disadvantaged people are not prevented from exercising their rights under the FOI Act. The Regulations provide that agencies must waive or remit (including refund) fees and charges if the applicant can satisfy the agency that:

- he or she is a concession card holder, or
- payment of the fee or charge would cause them financial hardship.

In addition section 53(2a) allows an agency to waive, reduce or remit a fee or charge in circumstances other than those provided for in the Regulations. That is, an agency can reduce or waive a fee at its own discretion, on a case-by-case basis. For example, an agency may decide to waive all fees and charges for an applicant who is seeking information for research purposes.

Any decision made under section 53 of the FOI Act to waive, reduce or remit a fee, or to charge in full according to the Regulations, should be made by an Accredited FOI Officer of the agency.

## Consistency of charging

Through the FOI Annual Reporting process it is apparent that some agencies charge applicants in accordance with the Regulations, some charge only the application fee and some do not charge at all. Inconsistency in charging across government can create negative community perception of FOI. For example, the public may view inconsistent charging as some agencies attempting to prevent or delay access to government information.

While an Accredited FOI Officer cannot be directed to make a particular decision under the FOI Act including how and when they should charge for FOI, they should apply the discretionary powers relating to fees and charges:

- equitably
- ethically
- transparently, and
- on a case-by-case basis.

Agencies may wish to develop an internal policy or guideline that helps explain how the discretionary power can be applied within their agency. This policy or guideline must make it clear that discretionary powers relating to fees and charges must be exercised on a case by case basis by the Accredited FOI Officer.

Any such policy or guideline developed by an agency would not affect those applicants who are legally eligible for a fee waiver as a result of being in possession of a concession card, or alternatively, those that can prove that the payment of a fee or charge would cause financial hardship.

## Members of Parliament

Section 53(2)(b) of the FOI Act entitles Members of Parliament (MPs) to access documents under FOI without charge unless the cost of dealing with the application, as described in section 53(2aa), exceeds a threshold set by the Regulations. The threshold is currently set at \$1000.

Applications from MPs are often broad and complex. If an agency estimates that the cost of dealing with an application will generate fees and charges totalling more than \$1000, the normal policy of charging fees should be applied. That is, the MP should be charged unless the agency decides to exercise its discretion to waive, reduce or remit the fee.

Where it is estimated that the cost to processing the application will significantly exceed the \$1000 threshold, consideration should be given to seeking an advanced deposit.

## Personal affairs

Where an applicant seeks access to their own personal information, and the applicant is not eligible for a fee waiver, the following fees and charges apply:

- the application fee

- charges associated with dealing with the application and giving access as prescribed by the Regulations – but not for the first two hours spent by the agency in dealing with the application as the first two hours are free of charge
- other fees and charges set by Regulation such as photocopying.

## Advance deposits

The Accredited FOI Officer has the discretionary power to seek an advance deposit from an applicant where the agency is of the opinion that dealing with the application will exceed the application fee.

If this is the case, the applicant could be consulted in the first instance to consider narrowing the scope. Discussion with the applicant to narrow the scope of the application is discretionary and should proceed on the understanding that the applicant can choose not to narrow the scope of the application. The only time an agency has a statutory obligation to assist an applicant to narrow the scope of an application is if it plans to refuse to deal with the application on the grounds that dealing with the application would amount to a substantial and unreasonable diversion of the agency's resources – see section 18 of the FOI Act.

To request an advance deposit the agency must write to the applicant advising that a deposit is required and how the deposit was calculated. An applicant should also be advised that dealing with the application has been suspended until payment is received.

## FOIMS

Each year, the FOI Annual Report includes the FOI fees and charges collected by agencies. This information is collected through the Freedom of Information Management System (FOIMS). Agencies are therefore required to record all fees and charges relating to FOI applications in FOIMS.

For more information about FOIMS please contact the FOI Officer in your agency.

## GST

All transactions and services under the Regulations have been determined as GST exempt by virtue of Section 81-5 of *A New Tax System (Goods and Services Tax) Act 1991* Determination 2000 (No.2).

## For more information

The guideline is supported by the FOI fees and charges information sheet available at the State Records website.

Please contact State Records if you require more information about FOI fees and charges by email [foi@sa.gov.au](mailto:foi@sa.gov.au) or by telephone (08) 8204 8786.