

NERC Policy on Charging Fees under the Freedom of Information Act 2000; the Environmental Information Regulations 2004 and the Data Protection Act 1998

1. INTRODUCTION

This document sets out the **Natural Environment Research Council's** (NERC) policy on charging fees in respect of responding to requests for information under the Freedom of Information Act 2000 (The Act). Our policy is consistent with the **Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004** (The Fees Regulations).

The Act allows greater access to information held by public authorities. As a public authority, NERC is bound by the statutory requirements of The Act which gives a general right of access to recorded information held by NERC, subject to certain conditions and exemptions. Applicants for information will be told whether we hold the information, whether any exemptions apply and whether we will make a charge.

In the majority of cases, the costs for complying with requests will be met by NERC. However, the right to access information needs to be balanced by our need to continue to carry out our public functions. For this reason The Act makes provision for us to: decline to comply with certain requests for information on the grounds of cost¹ where these requests would be particularly expensive; charge for answering requests for information in certain circumstances.

2. CHARGES

The current Fees Regulations lay down a standard rate of £25 per hour for the calculation of costs in complying with a request. Under the Fees Regulations, NERC cannot charge 'prescribed costs' if the request is below the limit currently laid down

Prescribed costs are:

- determining whether we hold the information requested
- locating the information or documents containing the information
- retrieving such information or documents
- extracting the information from the document containing it

Under revised ICO guidance on charging for environmental information, NERC may charge for the cost of staff time spent locating, retrieving and extracting the information.

Under the current Fees Regulations NERC is not obliged to provide information where the cost of doing so would exceed the limit - currently £450 (18 hours of staff time at £25/hr). Where the cost is greater than 18 hours of staff time and NERC agrees to service the request, NERC is allowed to charge 'reasonable costs'. NERC will normally charge a flat rate of £40 per person per hour² for servicing the whole request. Other charges allowed under The Act are referred to as 'disbursement' or communication costs.

¹ The costs are limited to those that the NERC can reasonably expect to incur in (i) determining whether it holds the information (ii) locating the information or documents (iii) retrieving the information or documents and (iv) extracting the information.

² Current charges, as of date of policy and subject to review, for both the NERC's own staff and anyone else engaged by it for these purposes (e.g. an external contractor).

Under The Act, the following items **cannot be included in the prescribed costs**:

- the time taken to decide whether a request for information meets the requirements of the Freedom of Information Act 2000; the Environmental Information Regulations 2004; the Data Protection Act 1998; or which legislation it falls under
- the costs involved in considering whether material should be classed as exempt under The Act or whether exempt information should be disclosed under the public interest test. This includes both staff time and the cost of any legal advice. It also covers situations where NERC can neither confirm nor deny that it holds information
- the costs involved in considering whether a request is vexatious or a repeated request
- obtaining authorisation to send out the information
- the time taken to calculate a fees notice, including time taken when aggregating requests
- redacting (taking out) information
- advice and assistance provided under section 16 of The Act
- overhead charges

Disbursements include:

- Photocopying/printing/scanning
- Providing CDs/disks etc.
- Reformatting information
- Postage & packing

Disbursement costs can be charged even if the prescribed costs have not been reached or have been waived. NERC will charge for disbursements as follows (*current charges as of date of policy and subject to review*). NERC reserves the right to waive charges in circumstances where the cost of their recovery is uneconomical.

Freedom of Information Act Fees – Disbursements

- 10p per A4 sheet for printing or photocopying in black and white. Colour and other paper sizes/finishes at cost of reproduction
- Postage costs - documents will be sent by second class mail unless specified otherwise
- Actual costs incurred when providing information in other formats³ where practical, and translation of information into a different language

Aggregating requests for costing purposes

In certain situations, the costs of answering more than one request can be added together or aggregated for the purposes of estimating whether the appropriate limit would be exceeded in relation to any one of those requests.

³ Where NERC is required by other legislation to produce information in a different language or format, e.g. under the Disability Discrimination Act 1995 or the Welsh Language Act 1993, we will not charge for it as part of complying with the The Act.

The Fees Regulations state that requests can only be aggregated in the following circumstances:

- two or more requests for information must have been made to NERC
- they must be either from the same person, or from 'different persons who appear to NERC to be acting in concert or in pursuance of a campaign'
- the requests must relate to the same or similar information
- they must have been received by NERC within a space of 60 consecutive working days.

This is intended primarily to prevent individuals or organisations trying to avoid charges by splitting a request into smaller parts.

Informing applicants of charges

NERC will inform applicants if a charge is to be made, either for disbursements, or because the request is likely to take more than 18 hours. In these circumstances, we will provide applicants with an estimate of time over 18 hours we expect it will take and how much is to be charged, including disbursement charges. We will do this by issuing a 'fees notice'.

Where NERC is required by other legislation to produce information in a different language or format, e.g. under the Disability Discrimination Act 1995 or the Welsh Language Act 1993, we will not charge for it as part of complying with the Act.

NERC will not begin work on the request until the fee has been received⁴.

If the actual cost of answering the request turns out to be more than the estimated cost charged, NERC will bear the additional cost; if the cost proves to be less than the fee charged, NERC will refund the excess money to the applicant.

VAT

If NERC receives a request for information that only it holds, the fees charged will not attract VAT. If NERC is asked for information that is available from another source that is not a public authority, the fees will attract VAT⁵. In summary:

- If NERC is asked for information, and the information was only available from us or another public authority, any fees charged would not attract VAT
- If NERC is asked for information that was available from another source, any fees would attract VAT. This would still be the case even if NERC was obliged to supply the information because the cost of answering was below the appropriate limit
- Fees charged for information that is provided in accordance with our Freedom of Information Publication Scheme will attract VAT

⁴ If payment is received by cheque, the NERC will treat the date on which the fee is received to be the day the cheque is cleared

⁵ These rules apply equally to requests that are above or below the £450 limit, as the determining factor as to whether VAT is charged is whether the information is available from another source that is not a public authority.

3. SUBJECT ACCESS REQUESTS

For subject access requests, the maximum fee prescribed in the Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000 is £10. NERC will normally waive this fee. If, however, the request requires us to search unstructured manual data a fee may be charged if the cost of locating and extracting the information would exceed the 'appropriate limit' set by The Fees Regulations - currently £450 (18 hours of staff time).

4. ENVIRONMENTAL INFORMATION REGULATIONS 2004

The Fees Regulations do not apply to the Environmental Information Regulations 2004 (The Regulations). The crucial difference between The Regulations and The Act is that there is no cost cut-off point for the obligation to supply environmental information under The Regulations, as there is under The Act. DEFRA guidance suggests that the exemption in The Regulations which relieves authorities from the obligation to respond to requests which are "manifestly unreasonable" would operate in cases where a request would impose an undue costs burden or diversion of resources, on the authority.

Under The Regulations, NERC may make "a reasonable charge" for supplying information except where access is provided by way of inspection on the premises, or for inspection of a public register. Further guidance on charging for environmental information can be found on the Information Commissioner's website at <https://ico.org.uk/>

5. COMPLAINTS

If you do not agree with our decision that the cost of responding to the request would exceed the appropriate limit, or if you have any other complaint in relation to NERC's compliance with the The Act then you should write, in the first instance, to:

The Complaints Officer, NERC, Polaris House, North Star Avenue, Swindon, Wiltshire SN2 1EU.

Website: www.nerc.ac.uk

If, after the investigation of your complaint, you remain dissatisfied then you may ask for the matter to be internally reviewed. If you are still dissatisfied then you may refer your complaint to the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

Website: <https://ico.org.uk/>

6. FURTHER INFORMATION

Guidance on fees under The Act can be viewed at:

<http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

Version	Revision Date	Comment
1	January 2005	
2	March 2008	Amendment to disbursement charges
3	August 2012	Simplification and revision of disbursement charges. Minor amendments and reformatting to improve clarity and reference to related access legislation EIRs and DP
4	August 2012	Remove redaction reference in footnote 1
5	December 2015	Removal of broken links and revision of EIR charging in line with ICO guidance