



***RIGHT TO INFORMATION ACT 2009
s 49(1)(c)***

***GUIDELINE IN RELATION TO CHARGES
FOR INFORMATION***

GUIDELINE AS AT 21 APRIL 2012

This Guideline issued as at 21 April 2012 replaces the previous Guideline in relation to charges for information

GUIDELINE IN RELATION TO CHARGES FOR INFORMATION

This Guideline is issued by the Ombudsman under s 49(1)(c) of the *Right to Information Act* 2009.

Section 16 of the Act requires the payment of a fee on an application for assessed disclosure, but also provides for the waiver of that fee under certain circumstances. This Guideline is intended to assist public authorities and Ministers in determining whether to waive the fee.

1. Receipt of the application for assessed disclosure

As with any application for assessed disclosure, public authorities (or Ministers) should, first of all, decide whether active disclosure ought to be made of the information being sought, under the principle that assessed disclosure is the method of disclosure of last resort. The potential for making active disclosure should always be a primary consideration.

Physical receipt of an application for disclosure is not the same as acceptance of the application for the purpose of processing it. If you determine that assessed disclosure is the most appropriate method of release, the application fee must be paid, or a decision to waive the fee must be made, before an application for assessed disclosure is accepted.

Also, before accepting an application you will need to determine whether the application itself meets the requirements of the RTI Act. You do this by making sure the application contains the information which is listed in clause 4 of the *Right to Information Regulations* 2010. If it does not contain this information, then it is not a valid application and you will need to assist the applicant to make a valid one.

2. The decision on a request for the application fee to be waived

If active disclosure of the information is not made, you must make a decision on whether payment of the fee is to be waived as soon as practicable.

The reasons for your decision should be documented, and you must provide them to the applicant if requested. Documenting the reasons will become important if the applicant asks for the decision to be reviewed:

- The applicant may ask for the decision to be reviewed by a more senior officer in the public authority, on an administrative basis.
- The decision in relation to waiver is also an administrative act, and might potentially be the subject of complaint to the Ombudsman under the *Ombudsman Act 1978*.
- It is also a decision which can be reviewed under the *Judicial Review Act 2000*.

If you decide to refuse the request for waiver, the applicant must pay the fee for the application for assessed disclosure to be formally accepted.

If you decide to waive the fee, the application is taken to have been accepted, unless negotiations are necessary under s 13(7) of the Act to refine or redirect the application. If such negotiations take place, the time within which the application is to be decided does not commence until the negotiations are completed or until 10 working days have elapsed since the receipt of the application, whichever first occurs.

4. Waiver

4.1 The grounds upon which the application fee may be waived

Section 16 specifies three grounds on which you can waive the payment of the application fee:

- that the applicant is impecunious: s 16(2)(a)
- the applicant is a Member of Parliament acting in connection with his or her official duty: s 16(2)(b)
- the applicant is able to show that he or she intends to use the information for a purpose that is of general public interest or benefit: s 16(2)(c).

Unless one of these grounds applies, the fee must be paid.

If you determine that the applicant falls into one of the categories of person listed in s 16(2), the application fee should be waived.

The discretion to waive the fee is covered directly by s 3(4)(b) of the Act - “discretions conferred by this Act [are to] be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information.”

4.2 Evidence

Your decision to waive needs to be based on evidence that satisfies you that one of these grounds exists. In most cases, and given the relatively small amount of money at issue, it is sufficient to obtain that evidence informally, by questioning the applicant. There may, however, be cases where it is reasonable to obtain written evidence or a statutory declaration.

You can refuse to waive the fee if the applicant unreasonably refuses to provide the evidence needed to satisfy you that waiver is appropriate.

4.3 s 16(2)(a) – impecunious applicant

A person is “impecunious” if they do not have sufficient money to pay the application fee.

In determining whether or not the applicant is impecunious, you should consider whether it is reasonable to charge the fee in light of the evidence about the applicant’s ability to pay, either at all or without some level of hardship.

The Ombudsman has previously accepted that a person was impecunious on proof that a person was reliant on a Commonwealth disability pension.

4.4 s 16(2)(b) – MP acting in connection with his or her official duty

The major issue here will be whether, in making the application for assessed disclosure, the Member of Parliament of the State of Tasmania is acting in connection with his or her official duty. The official duties of a Member of the Parliament include such matters as participating in the work of the Parliament, and representing the interests of constituents.

Making an application for assessed disclosure because the information is sought in connection with a Member’s private affairs or because the Member wishes to save a third party from having to pay the fee, for example, are reasons which do not relate to a Member’s official duties.

4.5 s 16(2)(c) – intended use for a purpose that is of general public interest or benefit

The expression “for a purpose that is of general public interest or benefit” is taken to mean “for a purpose that is of general interest or benefit to the public”.

The word “general” here emphasises that the purpose is not of interest or benefit to a narrow or special interest group only. For example, you should waive the fee:

- for a journalist who proposes to use the information in writing an article on a subject which is of wide general interest within the community, or
- for a public interest advocate who seeks information with a view to using it for the purposes of public advocacy – say a member of a human rights organisation who seeks information for the purpose of campaigning in relation to a human rights issue.

You must decide on an objective basis whether the applicant's purpose is of general public interest or benefit - your personal views are irrelevant. Further, in evaluating whether the applicant's purpose is of the necessary kind, you should consider the objects of the Act, as set out in s 3 – accountability, participation in governance, etc.

5. Refunding the application fee

Where the application fee has been paid, and you decide that the applicant would have been entitled to the waiver of the fee, the application fee should be returned to the applicant.

You may also consider it appropriate to refund the fee if early consideration of the application leads to a quick decision that active disclosure should be made, or if the applicant withdraws the application for assessed disclosure before significant work has been done in relation to the application.

Leon Atkinson-MacEwen
Ombudsman

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