

This Report will be made public on 5 September 2017

**Folkestone**

Hythe & Romney Marsh  
Shepway District Council



Report Number **C/17/35**

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**To:** Cabinet  
**Date:** 13 September 2017  
**Status:** Non – key decision  
**Head of service:** Amandeep Khroud – Head of Democratic services and Law  
**Cabinet Member:** Councillor Ann Berry, transport and commercial

**SUBJECT: CHARGING UNDER THE ENVIRONMENTAL INFORMATION REGULATIONS 2004**

**SUMMARY:** This report sets out proposals for making a charge under the Environmental Information Regulations 2004

**REASONS FOR RECOMMENDATIONS:**

Cabinet is asked to agree the recommendations set out below to determine whether to make a charge under the Environmental Information Regulations 2004

**RECOMMENDATIONS:**

1. To receive and note report C/17/35.
2. To determine the basis of charging

## **1. Introduction**

1.1 There are three access to information regimes, namely:-

- Data protection (subject access);
- Freedom of Information Act 2000 and;
- Environmental Information Regulations 2004 (EIR).

1.2 Each has their own charging regime.

## **2. The Charging Regimes**

2.1 A subject access request attracts a flat fee of £10.00 regardless of the costs of complying with it. However this fee is likely to be abolished when the General Data Protection Regulations come into effect.

2.2 Under the Freedom of Information a charge can be made if complying with the request would mean that the “appropriate cost limit” would be exceeded. The limit is £450.00 which is calculated on the basis of an hourly rate of £25.00 or 18 hours work. The time taken in redacting information cannot be used in the calculation of the time taken. It should be noted that although the time for redaction cannot be taken into in the calculation of the 18 hours it still represents, in terms of staff time, a cost to the council.

2.3 EIR however enables the council to charge for making environmental information available.

## **3. What is Environmental Information?**

3.1 The definition of Environmental Information is very wide and includes written, electronic, visual or audio information on:

- The state of the elements of the environment, e.g. air, atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms.
- Factors affecting the environment e.g. substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases.
- Measures (including administrative measures) and activities affecting or designed to protect the environment e.g. policies, legislation, plans, programmes, environmental agreements.
- Reports on the implementation of environmental legislation.
- Cost-benefit and other economic analyses and assumptions used within the framework of environmental measures and activities
- The state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are affected by the state of the environment, or factors, measures or activities affecting the environment.

3.2 Most property searches are based around a standard ‘CON29 form’, which covers the majority of information most homebuyers require. The ICO’s view is

that the information used to answer the form is likely to be considered environmental

#### **4. What can be charged for under EIR?**

4.1 There are two types of activity the council can charge for: staff time spent locating, retrieving and extracting the information, and costs incurred printing or copying the information and sending it to the applicant.

4.2 There are three costs the council cannot charge for: the costs of maintaining a register of information or a database, overhead costs (e.g. wider staff overheads) and staff time spent redacting information.

4.3 Charges must be reasonable and must not be used as an obstacle to access.

4.4 The regulations state that before the council can make a charge it must make available a schedule of charges and information in which a charge may be made or waived.

#### **5. Should the council charge under EIR and if so in what circumstances?**

5.1 Enquiries of neighbouring authorities (and some others further afield) reveal a wide variety of practices, including making no charge.

5.2 The corporate management team considered the issue and decided to put forward two options to cabinet namely:--

- Charge actual time based on an hourly rate of £25.00 or part thereof;
- Charge in the same circumstances as the council would under the Freedom of Information Act, namely only if the time it would take to deal with the request would take 18 hours or more and then on the basis of a fee of £450.00 representing the first 18 hours and £25.00 per hour for each additional hour;

5.3 In either case the council would charge for copying documents in accordance with its established fees and charges table.

5.4. An hourly rate for staff time of £25.00 is suggested. It is difficult to say which member of staff will be involved in dealing with requests under EIR. The hourly rates of members of staff in the council (excluding overheads) varies. The hourly rate for a member of staff on grade E for example is £14.42; this rises to £26.11 for staff on grade H. An hourly rate of £25.00, especially as this is the accepted rate for the purposes of calculating the appropriate cost limit under Fol, is considered reasonable.

5.5 .As far as the options are concerned:-

- Charging actual time would lead to the council covering at least some of the costs of dealing with the costs of dealing with enquiries under the

Environmental Information Regulations. In the last financial year (2016/17) 1026 requests under the access to information provisions were received of which 228 were made under EIR. Requests under EIR are often more complex and time consuming than many of the requests under the FoI. The council is currently incurring costs some of which it can recover but does not. It could be accused however of trying to deter access to environmental information

- Bringing the charging into line with the Freedom of Information provisions would standardize the charging for the two regimes and therefore would have the benefit of consistency. There would be less chance of any sort of challenge based on unreasonableness.

## 6. RISK MANAGEMENT ISSUES

6.1 The perceived risks are as follows:-

Perceived risk	Seriousness	Likelihood	Preventative action
. The council's decision to make a charge under EIR is challenged	Medium	Medium	Set a policy on reasonable charging

## 7. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

### 7.1 Legal Officer's Comments (DK)

The legal issues are covered fully in the body of this report.

### 7.2 Finance Officer's Comments (RH)

Financial implications are covered in the body of the report. In summary it is proposed to include a charge for EIR requests, based on an hourly rate of £25. Once approved this should be added the Discretionary Fees & Charges schedule.

### 7.3 Diversities and Equalities Implications (AK)

None

## 8. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

Amandeep Khroud, head of democratic services and law  
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The following background documents have been relied upon in the preparation of this report:

CMT minute: 17/112  
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