

FEES AND CHARGES

A guide to calculating costs in FOI requests

Fees and charges are determined by the *Freedom of Information Act 1982* and the *Freedom of Information (Access Charges) Regulations 2014*.

This fact sheet is designed to help FOI decision makers decide when application fees and access charges are payable in an FOI request. It also outlines the process for imposing a charge.

You should be aware of your responsibility as an FOI decision maker to ensure you apply

fees and charges correctly, in accordance with the FOI Act.

In deciding fees and charges, you should always have regard to the object of the FOI Act, which includes promoting the disclosure of information at the lowest reasonable cost.

Application fee

At the time of making an FOI request, the request must be accompanied by the application fee (s 17(2A)).

The application fee is set by the FOI Act at two fee units. The value of a fee unit is determined annually by the Treasurer and published in the Government Gazette. The amount usually increases each financial year.

Waiving or reducing the application fee

An agency can waive or reduce the application fee if it would cause hardship to the applicant, whether or not the fee has been paid (s 17(2B)).

Hardship must be determined on a case-by-case basis, although it is good practice for an agency to have a written policy so that its approach is consistent. For example, evidence that the applicant receives social security payments (such as a benefit or concession card) may be sufficient to

demonstrate financial hardship. Otherwise, evidence of income, bank balances or other information related to the person's financial situation might also be considered.

If you decide to not waive or reduce the application fee on a request, the applicant has a right to seek review of that decision by the Information Commissioner (s 49A(1)(c)). When refusing to waive or reduce the application fee, ensure that you inform the applicant of this right of review.

Access charges

Once an FOI request has been accepted and is being processed, an applicant may incur access charges. These are charges associated with searching for and providing access to documents.

Section 22 of the FOI Act, together with the Freedom of Information (Access Charges) Regulations 2014, provide the charges that may be imposed, and the procedural elements to be followed in calculating those charges.

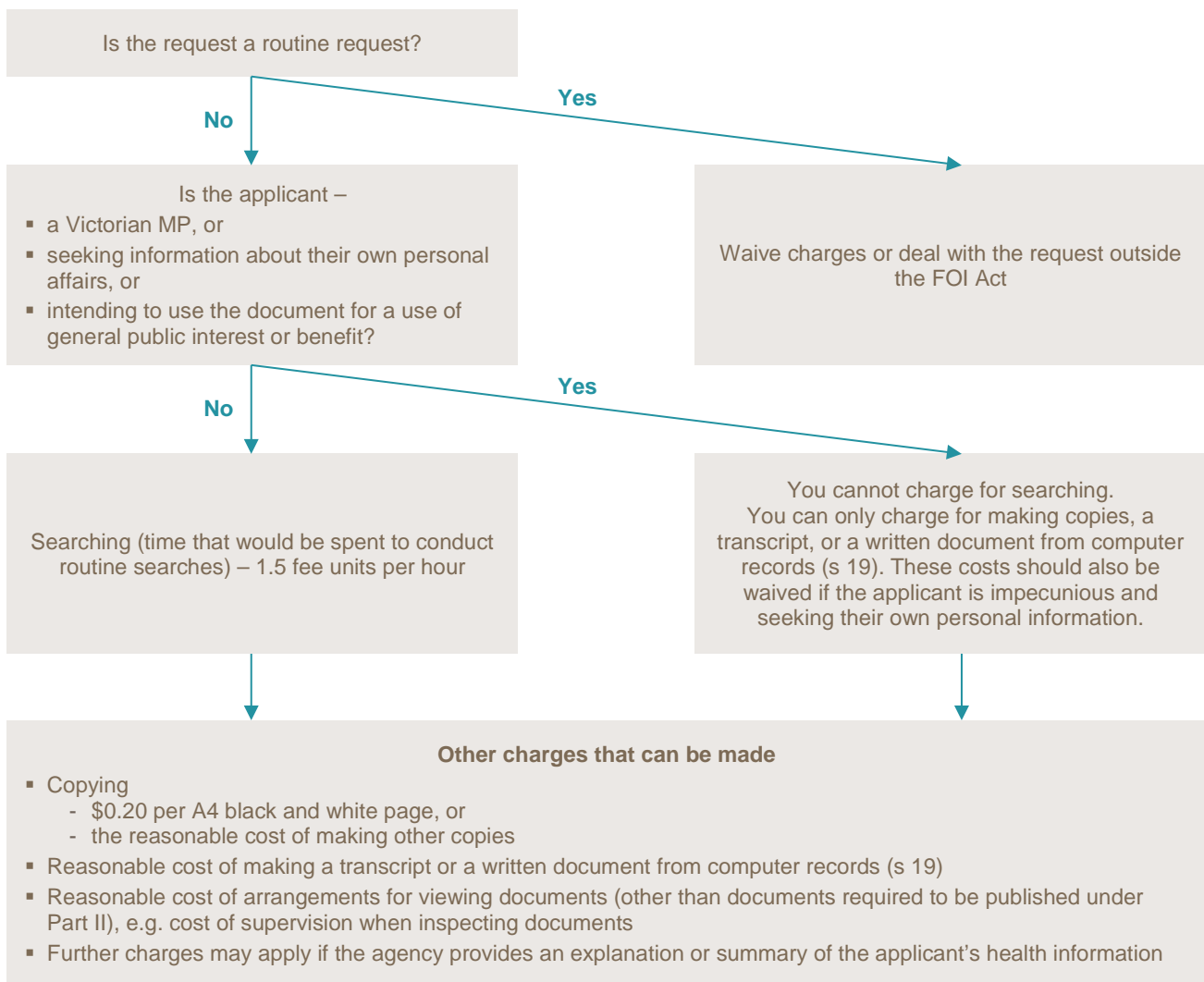
Freedom of Information (Access Charges) Regulations 2014

The Access Charges Regulations determine the ten categories of access charges that can be made in relation to an FOI request.

These charges are listed in the Schedule to the Access Charges Regulations (see Reg 6), and include items such as search time, time to supervise an inspection, the cost of making copies, the cost of producing written documents or transcripts and the cost of providing an explanation or summary of health information. You should refer to the Access Charges Regulations for full details on each item.

A charge cannot be made for any category or item not listed in the Schedule to the Access Charges Regulations.

Relevant considerations when deciding on access charges



Other instances when a charge does not apply

No charge can be imposed for time spent –

- > searching for a lost or misplaced document;
- > examining a document to determine if it is exempt; or
- > writing a notice of decision.

If an applicant is given access to a document in a form that is different from the form they requested, you cannot impose a charge that is greater than the charge that would apply to provide access in the requested form.

If the applicant is seeking their own personal information, charges must be waived if the applicant is 'impecunious' – that is, if they have little money and cannot reasonably afford the access charges (s 22(1)(i)). You could consider similar evidence of the applicant's financial status as you would in determining financial hardship.

Rounding of access charges

Certain access charges are to be calculated with reference to the value of a fee unit. The *Monetary Units Act 2004* provides that, when calculating a fee provided for by an Act, that amount may be rounded to the nearest ten cents. This means that the fee provided for by the Access Charges Regulations, being 1.5 or 1.9 fee units (where applicable), may be rounded to the nearest ten cents.

Example

If the amount of a fee unit is set at **\$3.38**, the access charges may be rounded as follows –

1.5 fee units = **\$5.10** rounded up from 5.07

1.9 fee units = **\$6.40** rounded down from 6.422

The above amounts would then be used to calculate the charge for the relevant number of hours. For example, hours of search time using the above amount would be calculated as follows –

One hour or less = **\$5.10**

Between one hour and two hours = **\$10.20**

Between two hours and three hours = **\$15.30**

Estimating access charges

The charge should be estimated as soon as possible after the request has been accepted as valid and able to be processed. The decision maker should consult relevant business areas in order to estimate how many documents may be relevant to the request, and how many hours of search time are required.

Seeking a deposit

The agency must seek a deposit from the applicant if the estimated access charges are more than \$50.00 (s 22(3), Reg 8). The deposit is calculated as follows (Reg 9) –

- > If the estimated charge is more than \$50.00 up to \$100, the required deposit is \$25.00.
- > If the estimated charge is more than \$100.00, the deposit is 50% of the estimated charge.

An agency must advise the applicant in writing of the required deposit and ask them whether they want to proceed with the request (s 22(4)). The notice must advise the applicant of their right to apply for the charge to be reviewed, how they should apply and the timeframe (s 22(7)).

It is recommended that you discuss with the applicant practical alternatives for narrowing their request or reducing the charges. This is mandatory if the applicant requests it (s 22(6)). For example, an agency might offer to reduce the charge if the applicant agrees to extend the agency's processing time.

The 30 day period for processing the request, as provided for by the FOI Act, starts afresh on the day the applicant pays the deposit (s 22(5)).

Access in an alternative form

If access could be provided in more than one form and the applicant has not requested a particular form, the charge must reflect access in the form that would be at the lowest reasonable cost (Reg 7).



Notice of decision

The charges decision must be given in a notice to the applicant under s 27.

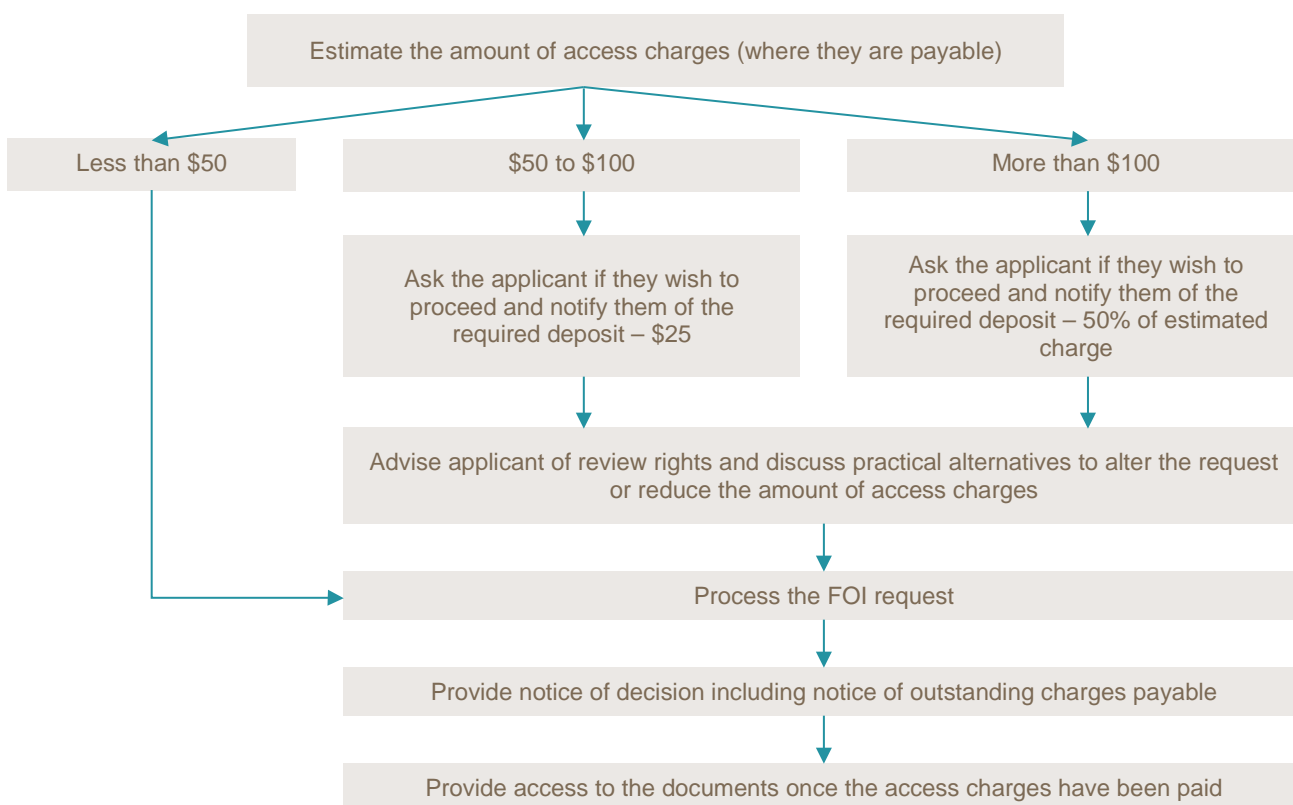
Review rights

An applicant may apply to the Victorian Civil and Administrative Tribunal for review of a decision about the amount of a charge, but only where the Information Commissioner has certified that the matter is sufficiently important for the Tribunal to consider (s 50(1)(f)).

You should inform an applicant about this right of review and the need to seek a charges certificate from the Information Commissioner before commencing proceedings at the Tribunal. An applicant should preferably make such a request in writing and provide any supporting information to assist in assessing the request.

The Information Commissioner will determine whether to issue a charges certificate based on any information provided and enquiries conducted with the agency and applicant.

Process for imposing access charges



Further Information

Visit our website, call or email us:

- > www.ovic.vic.gov.au
- > 1300 842 364 (1300 VIC FOI)
- > enquiries@foicommissioner.vic.gov.au

Other related fact sheets include:

- > The FOI access process
- > Writing FOI access decisions

Disclaimer: This fact sheet does not constitute legal advice and should not be used as a substitute for applying the provisions of the Freedom of Information Act 1982, or any other legal requirement, to individual cases.