



**Roinn Cumarsáide, Gníomhaithe
ar son na hAeráide & Comhshaoil**
Department of Communications,
Climate Action & Environment

Circular AIE/2/2017
AIE (Access to Information on the Environment) Search & Retrieval Fees

07th February 2017

A Chara,

I am directed by Mr Denis Naughten, T.D., Minister for Communications, Climate Action & Environment, to refer to the European Communities (Access to Information on the Environment) Regulations 2007 – 2014 and the associated obligations placed on public authorities with regard to charges.

CJEU Ruling

Firstly I refer you to the judgment in Case C-71/14 East Sussex County Council v Information Commissioner, (6 October 2015). The court concluded that:

“Article 5(2) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC must be interpreted as meaning that the charge for supplying a particular type of environmental information may not include any part of the cost of maintaining a database, such as that at issue in the main proceedings, used for that purpose by the public authority, but may include the overheads attributable to the time spent by the staff of the public authority on answering individual requests for information, properly taken into account in fixing the charge, provided that the total amount of the charge does not exceed a reasonable amount.”

European Communities (Access to Information on the Environment) Regulations 2007 to 2014

Regulation 15 of the European Communities (Access to Information on the Environment) Regulations 2007 to 2014 deals with fees associated with AIE requests. Both 15(1) and 15(2) of the regulations outline the charges that can be applied to an applicant on receipt of an AIE request.

- “15(1) (a) A public authority may charge a fee when it makes available environmental information in accordance with these Regulations (including when it makes such information available following an appeal to the Commissioner under article 12), provided that such fee shall be reasonable having regard to the Directive.
- (b) Notwithstanding sub-article (a), a public authority shall not charge a fee for access to any public registers or lists of environmental information pursuant to Article 5(1)(d).
- (c) Notwithstanding sub-article (a), a public authority shall not charge a fee for the examination in situ of information requested.
- (d) Where an applicant examines information in situ and wishes to obtain copies of that information, a public authority may charge a fee, consistent with the list of fees specified under article 15(2), for the provision of such copies.

(2) Where a public authority charges a fee pursuant to sub-article (1), it shall make available to the public a list of fees charged, information on how they are calculated and the circumstances under which they may be waived.”

AIE Guidelines (May 2013)

The Guidance for Public Authorities and others on implementation of the Regulations which was published in May 2013 states under 16.4:

A "reasonable" charge may vary depending on the volume of information to be released but could, for example, include costs connected with compiling, copying, printing and posting of the information. The charge may only relate to the supply of information, and charges should not be made for:

- provision of general advice on the information that is available,
- time expended on discussing a request,
- determination of what information is discoverable or
- search and retrieval costs for the information requested.

In light of the CJEU ruling point 4 “search and retrieval costs for the information requested” will be discounted and replaced by the instruction of this circular AIE/2/2017.

Conclusion

A public authority may charge for information supplied under the regulations. This charge may include not only postal and photocopying costs, but also to costs attributable to the time spent by staff on answering an individual request for information, which includes the time spent on searching for the information and putting it in the form required. It does not however include costs attributable to the establishment and maintenance of any registers of environmental information as provided for in Article 15(1)(b) of the AIE regulations.

This is however subject to the overriding provision contained in Article 5 of the Directive that any such charge shall not exceed a reasonable amount.

I wish to advise you that it is essential that each public authority, in line with Regulation 15(2), must make available to a member of the public the schedule of fees that may apply to them on application of an Access to Information Request. Furthermore, it is advisable to publish such information on the AIE section of each public authority's website.

Thank you in anticipation of your cooperation on this matter.

Yours sincerely,

A handwritten signature in cursive script that reads "Terry Dunne".

Terry Dunne
Principal
Environment Policy and Awareness