

EXPLANATORY STATEMENT

Freedom of Information Act 1982

Freedom of Information (Charges) Regulations

1982 NO. 197

OUTLINE

The Freedom of Information (Charges) Regulations are made under section 94 of the Freedom of Information Act 1982. Section 94 provides for the making of regulations for and in relation to the making of charges of amounts, or at rates, fixed by or in accordance with the regulations in respect of requests for access to documents or in respect of the provision of access to documents, including requiring deposits on account of such charges.

2. Sub-section 94(2) fixes certain parameters for any regulations made in relation to charges under section 94 -
 - (a) the amounts or rates of charge may not be different with respect to different classes of applicants for access or with respect to different agencies or different classes of agencies;
 - (b) they may not require a charge to be paid in respect of the time spent in examining a document to determine whether it contains exempt matter;
 - (c) any charge that is made for time spent in searching for or retrieving a document shall be calculated at a single hourly rate applicable uniformly to all agencies regardless of the classification or designation of the officer who searches for or retrieves the document; and
 - (d) the charges may include an amount for the direct costs incurred by an agency in providing an officer to supervise personal inspection by a person of a document for which a request for access has been made under the Act.

3. In outline, the Regulations provide as follows:-

(a) no charge is payable in respect of a request for access by a person where the documents involved relate to his personal affairs unless -

- (i) a period of less than 3 months has elapsed since the person was last given access to those documents and there has been no change in the documents;
- (ii) the number of pages of photocopy to be provided exceeds 100, in which case a charge of 10 cents per page is payable for each page in excess of 100; and
- (iii) supervision is to be provided of personal inspection of the documents involving a period of time exceeding 2 hours in which case a charge at \$6.25 per half hour or part thereof is payable in respect of the excess time.

(b) where a request for copies of a written document involves not more than one hour in searching for or retrieving the documents and not more than 50 pages of photocopying, there is a fixed charge of \$12.50.

(c) where a request for copies of a written document involves more than one hour but not more than 2 hours of search or retrieval time and not more than 100 pages of photocopy, there is a fixed charge of \$25.

(d) in other cases, the charge is to be fixed on the following basis -

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- (i) a fixed charge of \$8 in respect of the administrative handling of a request;
- (ii) a charge at the rate of \$12-per hour for the time spent in searching for or retrieving the documents involved;
- (iii) a charge of 10 cents per page of photocopy where photocopies are provided;
- (iv) where the use of a computer or like equipment is involved in producing a printout, a charge not exceeding the actual cost incurred;
- (v) where a transcript is made of shorthand notes or of a sound recording, a charge of \$4.40 per page of transcript;
- (vi) where supervision is provided of the personal inspection by an applicant of the documents to which he is given access, a charge of \$6.25 per half hour or part thereof;
- (vii) where the document concerned is a sound recording or a film or videotape and arrangements are made for the applicant to hear or see the recording, film or videotape, a charge not exceeding the actual cost of making those arrangements other than the provision of supervision;
- (viii) where postage or other delivery costs are incurred in providing access, a charge not exceeding the actual amount of those costs.

- (f) where notification of a liability to pay a specified charge is to be given in advance of the carrying out of the work necessary to make a decision on the request or to provide the access sought, a charge may be fixed on the basis of applying the appropriate charge items to an estimate of the work involved. A charge so fixed is required to be paid before the work is done and may be adjusted after the work is completed.
- (g) provision is made for the payment of deposits on account of charges where the charge or estimated charge will exceed \$25.

NOTES ON REGULATIONSRegulation 1 - Citation

4. Regulation 1 sets out the short title of the Regulations

Regulation 2 - Interpretation

5. Sub-regulation 2(1) sets out definitions of certain terms used in the Regulations. The most important of these is the definition of "written document". The effect of the definition is to exclude from the scope of the term computer printout and the like, or transcripts of sound recordings or shorthand notes prepared for the purpose of a request under the Act, as well as sound recordings and films and videotapes.
6. Sub-regulation 2(2) deals with misplaced documents or documents which are not properly indexed in the relevant filing system. It provides that time spent by an agency or a Minister in searching for or retrieving a document does not include -

- (a) in the case of a misplaced document, any time in excess of the time which would have been spent had the document been in the place in which, according to the filing system of the agency or of the office of the Minister, it ought to have been located; or
- (b) in the case of a document which is not indexed in the relevant filing system any time in excess of the time which would have been spent had the location of the document been indicated in the filing system of the agency or of the office of the Minister if its location ought reasonably to have been so indicated.

7. Sub-regulation 2(3) provides that time spent by a person in searching for or retrieving an official document of a Minister shall be taken, for the purpose of the Regulations, to be time spent by the Minister.

Regulation 3 - Liability to pay charges

8. Sub-regulation 3(1) provides that an agency or a Minister may make a decision whether an applicant for access to a document is liable to pay, in respect of his request or in respect of the provision to him of access to the document, any of the charges applicable under the Regulations.

9. Sub-regulation 3(2) provides that where an agency or Minister makes a decision under sub-regulation 8, 9 or 10 applies, to pay the applicable charge calculated in accordance with the Schedule.

Regulation 4 - Charges applicable generally

10. Regulation 4 provides that the charges set out in Part I of the Schedule of the Regulations apply in respect of a request for access to a document and the charges in Part II of the Schedule in respect of the provision of access to a document. The regulation-making power in sub-section 94(1) of the Act distinguishes between charges in respect of the request and in respect of the provision of access.

11. The charges in Part I of the Schedule are -

- (a) in respect of the administrative procedures involved a charge of \$8, in handling a request;
- (b) a search or retrieval charge at the rate of \$12 per hour in respect of the time spent in searching for or retrieving the document;
- (c) a charge of the production of a document containing information in a discrete form from a computer or like equipment of an amount not exceeding the actual cost incurred by the agency; and
- (d) a charge for producing a transcript from a sound recording or shorthand notes of \$4.40 per page.

12. The charges in Part II of the Schedule are -
- (a) a charge in respect of the supervision by an officer of personal inspection of a document by the applicant of \$6.25 per half hour or part thereof;
 - (b) a photocopy charge of 10 cents per page of photocopy provided to the applicant;
 - (c) a charge for copies, other than photocopies, of written documents of \$4.40 per page of copy;
 - (d) where, deletions are to be made from a document produced as a printout from a computer or other like equipment, and it is not reasonably practicable to make these deletions otherwise than by the use of the computer or other equipment, a charge of an amount not exceeding the actual costs incurred by the agency in producing the document with the deletions by use of that equipment;
 - (e) where arrangements are made for the viewing or hearing of a sound recording, film or videotape by the applicant, a charge of an amount not exceeding the actual costs incurred by the agency or the Minister in making those arrangements;
 - (f) where a copy of a sound recording, film or videotape is provided to the applicant, a charge of an amount not exceeding the actual costs of the agency or the Minister in producing the copy;
 - (g) a charge for producing a transcript of a sound recording or shorthand notes of \$4.40 per page; and
 - (h) where a copy of a document is to be posted or delivered to the applicant at a place other than an Information Access Office, a charge of an amount not exceeding the cost of postage or delivery.

Regulation 5 - General charges not applicable in relation to certain documents

13. Regulation 5 provides that regulation 4 does not apply where regulation 6 or 7 applies, or regulation 7 would have applied if the relevant request had been granted.

Regulation 6 - Charges applicable in relation to personal records

14. Sub-regulation 6(1) is concerned with access by a person to a document containing information relating to his personal affairs. The regulation applies where -

- (a) the applicant has not previously had access to the document; or
- (b) if he has had access to the document previously, the document has been modified in a material particular since he last had access or he last had access more than 3 months prior to the current request.

15. Sub-regulation 6(2) provides that the charges set out in Part III of the Schedule apply in respect of the provision of access where the conditions of sub-regulation 6(1) are met. The effect is that no charge is payable for providing a copy of the document to the applicant, unless more than 100 pages of photocopy is involved. In that case, there is a charge of 10 cents for each page in excess of 100. Where the applicant wishes personally to inspect the document, no supervision charge is payable in respect of the first 2 hours. A charge of \$6.25 per half hour or part thereof is payable in respect of time in excess of 2 hours.

Regulation 7 - Charges applicable in relation to written documents where minimum search involved, etc.

16. Regulation 7 provides for charges payable in respect of requests for photocopies of written documents.

17. Sub-regulation 7(1) sets out the conditions for the application of the regulation -

- (a) that time spent searching for or retrieving the requested document does not exceed 2 hours; and
- (b) that access is to be given by way of the provision of a photocopy of a written document.

18. Sub-regulation 7(2) provides that the charges set out in Part IV of the Schedule apply in respect of the provision of access where the conditions of sub-regulation 7(1) are met. This means that, if the search and retrieval time is not more than one hour and where not more than 50 pages of photocopy are provided, a charge of \$12.50 applies. Where the search and retrieval time exceeds one hour but does not exceed 2 hours and not more than 100 pages of photocopy are provided, a charge of \$25 applies. Where more than 50 or 100 pages of photocopying, as the case may be are provided, a charge of 10 cents per page for each page in excess of the 50 or 100 pages applies.

Regulation 8 - Liability for charges where access may be provided in more than one form

19. Regulation 8 provides that, where access to a document may be provided in more than one form and the applicant has not requested access in a particular form, the charge payable by the applicant shall not exceed the lowest amount that the applicant would be liable to pay if access were given in some form other than the form selected by the agency or the Minister.

Regulation 9 - Charges based on estimates of time, etc., may be fixed in certain cases

20. Regulation 9 permits the notification, in advance, of the charges payable in respect of a request for access, or the provision of access, as the case may be. Since, in many cases, charges

calculated in accordance with the Schedule may not be capable of ascertainment until the relevant steps have been taken. This regulation provides that advance notification of a charge is to be based on an estimate of what the charge is likely to be.

21. Sub-regulation 9(1) applies in relation to a request for access.

22. Sub-regulation 9(2) applies in relation to the provisions of access, otherwise than by way of personal inspection by the applicant of the document to which access is granted.

23. Sub-regulation 9(3) applies in relation to the personal inspection by the applicant of the document to which access is granted.

24. Sub-regulation 9(4) provides that, where a charge is fixed in accordance with sub-regulation 9(1), 9(2) or 9(3), the applicant is, subject to adjustment of that liability under regulation 10, liable to pay the charge so fixed.

25. Sub-regulation 9(5) is an interpretative provision, providing for the case where personal inspection involves the hearing or viewing of a sound recording, film or videotape.

Regulation 10 - Readjustment of liability for charges in cases where regulation 9 applies

26. Regulation 10 provides for the adjustment of an applicant's liability which was fixed pursuant to regulation 9 where, when the work has been performed and the charge can be calculated, in accordance with the Schedule, on the basis of work actually performed, the charge calculated on that basis differs from the charge fixed on the basis of an estimate of the work.

27. Sub-regulation 10(1) applies to the case where an amount of charge has been fixed in accordance with regulation 9 and it is subsequently ascertained, after a decision has been made on the request

for access, all the steps necessary to provide access have been taken or the applicant has had access to the document by way of personal inspection, as the case may be, that the charge fixed in accordance with regulation 9 differs from the charge that would be applicable by virtue of the relevant provisions in the Schedule. In such a case, the agency or Minister concerned shall fix as the amount of the charge an amount equal to that ascertained in accordance with the relevant provisions of the Schedule.

28. Sub-regulation 10(2) provides that, where a decision is made not to grant access, the adjustment of liability in accordance with sub-regulation 10(1) may only be made where the charge ascertained in accordance with the relevant provisions of the Schedule is less than the amount fixed in accordance with regulation 9. The effect is that an applicant whose request is refused after he has been notified of charge fixed by estimate in respect of that request may not subsequently be called upon to pay more than that charge.

29. Sub-regulation 10(3) provides that, where a charge is adjusted in accordance with regulation 10, the applicant is liable to pay the adjusted charge in lieu of the charge fixed in accordance with regulation 9.

30. Sub-regulation 10(4) provides that, if the adjusted charge is less than the charge fixed under regulation 9 and that charge has been paid, the applicant is entitled to a refund of the difference. Where the amount paid is less than the amount payable as a result of the adjustment of the charge, the amount already paid is deemed to have been paid as a deposit.

Regulation 11 - Charges to be paid before access is granted

31. Sub-regulation 11(1) provides that, where an applicant is liable to pay a charge, that charge shall be paid before access is granted.

32. Sub-regulation 11(2) provides an exception in the case of a charge for supervision of personal inspection unless that charge has been fixed in accordance with sub-regulation 9(3).

33. Sub-regulation 11(3) has the effect that an applicant is not liable to pay a charge or part of a charge remitted in accordance with section 30 of the Act.

Regulation 12 - Deposits

34. Sub-regulation 12(1) empowers an agency or a Minister to make a decision that an applicant is required to pay a deposit on account of charges payable under the Regulations, where -

- (a) the agency or Minister has decided that the applicant is liable to pay a charge, other than a charge under regulation 6 or regulation 7; and
- (b) the charge exceeds \$25.

35. Sub-regulation 12(2) fixes the maximum levels of deposit which may be required as -

- (a) where the amount or estimated amount of the charge exceeds \$25 but does not exceed \$100 - \$20; and
- (b) where the amount or estimated amount of the charge exceeds \$100 - 25% of that amount or estimated amount.

Regulation 13 - Applicant to be notified of liability to pay deposit

36. Regulation 13 requires that, where an agency or Minister decides that an applicant is required to pay a deposit, the applicant be notified in writing of that fact and the amount of the deposit at the same time as he is notified of his liability to pay a charge pursuant to section 29 of the Act.

Regulation 14 - Deposit not to be refunded

37. Regulation 14 provides that a deposit on account of a charge paid by an applicant shall not be refunded except in compliance with a decision under section 30 of the Act to remit the charge in whole or in part.

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