

	<b>Charging for Official Information Act 1982 Requests</b>
<b>Owner</b>	Chief Strategy Officer
<b>Position Administering this Policy</b>	Head of Policy and Government Relations
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<b>Related Policies &amp; Legislation</b>	Official Information Act 1982 Privacy Act 2020 Ministry of Justice Charging Guidelines for Official Information Act 1982 requests Ombudsman’s Charging Guide, June 2016

## Introduction

The Official Information Act 1982 (the OIA) includes a provision under Section 15 allowing agencies to charge requesters for information supplied under an OIA request. This policy outlines the criteria EQC will use to consider how and when it will charge for supplying information under an OIA request. The operational procedure for implementing a charge is listed as **Appendix 1**, and must be read in conjunction with this policy.

This policy is based on the Ombudsman and Ministry of Justice’s all-of-government guidelines for charging for OIA requests.

## Our Values

This policy supports or reflects the EQC values as follows:

### *We do the right thing*

EQC is committed to conducting its affairs in an open and transparent manner that is fair for all customers, taxpayers and reinsurers, and gives due consideration to the most appropriate utilisation of staffing resources. EQC is committed to providing requesters with information through and in accordance with the OIA, subject to any statutory withholding grounds that may apply.

### *We’re better together*

EQC’s charging policy is based on criteria that all government departments are expected to adhere to and reflects government practice for OIA requests.

## *We're always learning*

EQC is committed to ensuring this policy treats all requests and requesters equitably. Any decision made in accordance with this policy may be subject to review by the Ombudsman and EQC is committed to engaging with the Ombudsman's office on an ongoing, as-required basis, and amending its practice where appropriate.

## *We make a difference for people*

EQC will engage with the requester to explain any charge and its rationale. This may encourage requesters to make more appropriately focused requests. Focusing a request may also prevent the need to make a charge. Assisting requesters to make requests with greater particularity also allows EQC to respond in a more timely and efficient manner.

## **Applies to**

This policy applies to staff (permanent, fixed term, and casual EQC employees; also to contractors, consultants or temporary agency staff) who are responsible for or engaged in considering and/or responding to OIA requests.

## **Scope**

This policy applies to any part of an OIA request that is made, or transferred, to EQC that *does not involve the requester's personal information* (i.e. a customer's request for their own claim information). Personal information requests are subject to the Privacy Act 2020 and are out of scope of the charging guidelines set out in the OIA. Section 66 of the Privacy Act specifies limited grounds on which public sector agencies can charge for personal information requests, which EQC will, separately, act consistently with

## **Approach**

EQC receives large volumes of requests for official information about past EQC claims on residential properties. EQC does not currently propose charging for such requests and is moving towards making such data available proactively.

EQC will only use its discretion to charge for other OIA requests (that do not relate to residential properties) in limited and appropriate cases. The decision to charge will be considered on a case-by-case basis, and must be made by the proper delegated authority (see *Delegated Authority to Charge* section).

## *Ombudsman guidance*

EQC will act consistently with current guidance on charging issued by the Office of the Ombudsman <https://www.ombudsman.parliament.nz/resources/charging-guide-charging-official-information-under-oia-and-lgoima>.

In summary this guidance notes:

- An agency 'may charge for the supply of official information'.

- An agency that receives a request for official information must, within the statutory or extended timeframe, make and communicate its decision ‘whether the request is to be granted and [if so] in what manner and for what charge (if any)’.
- Any charge fixed must be ‘reasonable’, and regard may be had to the cost of labour and materials involved in making the information available, and any costs incurred in meeting an urgent request.
- An agency can require the whole or part of any charge to be paid in advance.
- Complaints about charges can be investigated by the Ombudsman.

## Key points that may influence a decision to charge

The Ombudsman advises that a charge may be reasonable if the time and/or effort required to meet a request is likely to have a significant impact on EQC’s day-to-day operations. What constitutes a “significant impact” will vary across agencies and circumstances, including present workload.

In deciding whether to fix a charge the public interest in the availability of the requested information will also guide EQC’s decision on the issue and may provide a basis to remit a charge.

Any decision to charge should also consider the discretion to extend the timeframe for responding to a request under section 15A of the OIA.

EQC may elect to charge for a request for claim-related information where the requester does not have a direct personal interest in the specific claim.

The Ministry of Justice guidelines allow EQC to consider:

- charges for repeated requests from the same requester in respect of a common subject over intervals of up to eight weeks; and
- whether requests after the first should be aggregated for charging purposes.

## EQC Process

The OIA requires EQC to consider whether a charge or time extension is appropriate before refusing a request in its entirety under substantial collation and research.

Before any discretion to charge is exercised, EQC will also consider other options available under the OIA. For example, if the request is for a large volume of information, it may be possible to:

- contact the requestor and assist them in identifying or refining the information they are seeking;
- extend the time for meeting the request on the grounds outlined under section 15A of the OIA.

If EQC receives repeated requests from the same source in respect of a common subject over intervals of up to eight weeks, the requests may be aggregated when considering the size of the task for charging purposes.

EQC may decide to charge for one or more of the following reasons:

- The request is likely to consume a considerable amount of labour or resources

- The requester has recently made a large volume of time-consuming requests
- The information that is sought is commercially valuable and any charge can reasonably be treated as a business expense by the requestor.

## Delegated Authority to Charge

The below table lists the appropriate delegation for deciding to charge for an OIA request:

Role	Authority to charge up to:
Head of Policy and Government Relations	\$10,000
Chief Strategy Officer	\$25,000
Chief Executive	Any amount

The Chief Executive will be informed of any proposed decision to charge.

## Accountabilities

Any decision by EQC to charge for requests made under the OIA can be reviewed by the Ombudsman. EQC must also advise the customer that they have the right to approach the Ombudsman and seek a review of EQC's decision to charge.

This policy will be made publicly available on EQC's website.

## Breach of policy

Non-compliance with this policy may be investigated in accordance with EQC's Disciplinary or other applicable policy.

## Appendix 1: Operational guidelines for Charging for an Official Information Act request

EQC will take the following steps when it responds to an OIA request where charging may be appropriate. The statements highlighted in bold each have a separate supporting section below the steps.

- i. EQC receives request, identifies information in scope of request and begins to collate and research in scope information in order to determine whether the information can or cannot be released.
- ii. EQC considers whether it is an appropriate case that would warrant charging and whether any other options are available for managing the request (such as refining or extending the request).
- iii. EQC decides whether it is appropriate to charge for the supply of the requested information. If it is not appropriate to charge, then the request will be processed as per standard EQC processes. This may include refusal on the grounds of substantial collation and research, in appropriate cases.
- iv. If it is appropriate to charge, EQC will first consult the requester to advise of the proposal to charge and advise of any other options available that would avoid the potential need to charge.
- v. Where EQC considers it is still appropriate to charge, EQC will then **calculate the charge** using the below formula as outlined in the Ombudsman's guidance, based on the rates set out in the Ministry of Justice charging guidelines. If the charge is for an aggregated request (multiple requests by a single requester on a similar topic within a period of eight weeks), then the first of the requests aggregated is free and the information pertaining to the following requests are chargeable.

$$\begin{aligned} &(((\text{Estimated staff hours}] - 1) \times \$76) + (((\text{Estimated pages to be photocopied}] - 20) \times \$0.20) \\ &= \text{Amount EQC will consider charging} \end{aligned}$$

- vi. EQC considers whether any **remissions** need to be made to the total amount charged. Remission, in whole or in part, will consider the following factors:
  - i. The level of **public interest** in making the requested information available; and/or
  - ii. Whether the charge will cause the requester **hardship**.
- vii. EQC communicates its decision to release the information subject to a charge to the requester. This communication, which will advise of the maximum possible charge and whether a deposit is required, is made as early as possible and in writing. If further steps are available to the requester to reduce or remove the charge (e.g. further refinement of the request's scope), then this will also be communicated to the requester. The communication will also include the requestor's right to complain to the Office of the Ombudsman about any proposed charges.

At the same time, the Head of Policy and Government Relations will contact Finance to request an invoice for the charge. Confirmation of acceptance and payment of the charge will be monitored by both the Government Relations Team (who will ask the requester to confirm acceptance of the charge by return email), and Finance (who will notify the Government Relations Team when the payment is received).

- viii. Await payment of the **deposit** (if requested) and/or confirmation that the requester accepts the charge.
- ix. Prepare the information for release, including reading and reviewing to decide on withholding or release, seeking legal advice, consultation with necessary third parties and peer-reviewing final response and documents for release.
- x. Notify the requester that the information is ready for release and invoice for the charge if a full deposit has not been requested or paid. Await payment of any remaining aspect of the charge.
- xi. Release the information without undue delay once payment is received.

## Calculating the charge: what is chargeable and what isn't?

Any charge must adhere to the Ombudsman and Ministry of Justice<sup>1</sup> charging guidelines at the particular time.

Under current guidelines, EQC can charge for the following activities:

<b>Labour</b>	<ul style="list-style-type: none"> <li>• Search and retrieval</li> <li>• Collation (bringing together the information at hand)</li> <li>• Research (reading and reviewing to identify the information at issue)</li> <li>• Redacting</li> <li>• Scanning or copying</li> <li>• Reasonably required peer review to ensure the above tasks have been carried out correctly</li> <li>• Formatting information in a way sought by the requester</li> <li>• Supervising access where information has been made available for viewing</li> <li>• Reproducing film, video or audio recordings</li> </ul>
<b>Materials</b>	<ul style="list-style-type: none"> <li>• Paper</li> <li>• Discs or other electronic storage devices that the information is provided on</li> </ul>
<b>Other costs</b>	<ul style="list-style-type: none"> <li>• Retrieval of information from off-site</li> </ul>

EQC cannot currently charge for the following activities:

<b>Decision Making (Steps ii and ix above)</b>	<ul style="list-style-type: none"> <li>• Work required to decide <i>whether to grant the request in whole or in part</i>, including: <ul style="list-style-type: none"> <li>○ Reading and reviewing to decide on withholding or release;</li> <li>○ Seeking legal advice to decide on whether to withhold or release</li> <li>○ Consultation to decide on withholding or release; and</li> <li>○ Peer review of the decision to withhold or release.</li> </ul> </li> <li>• Work required to decide <i>whether to charge</i> and if so, how much, including estimating the charge</li> </ul>
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<sup>1</sup> Or the organisation which is responsible for the all-of-government OIA charging guidelines

<b>Administrative inefficiencies or poor record keeping</b>	<ul style="list-style-type: none"> <li>Searching for/retrieving information that is not where it should be because of administrative inefficiencies or poor record keeping</li> </ul>
<b>Administrative costs associated with the way an agency chooses to process a request (Step ix above)</b>	<ul style="list-style-type: none"> <li>Drafting cover letters, briefings for the Minister, or formatting information in a way preferred by the agency but not sought by the requester</li> </ul>
<b>Costs not directly related to supplying the information</b>	<ul style="list-style-type: none"> <li>General overheads, including the costs of establishing and maintaining storage systems or facilities</li> </ul>

## Charging amounts and remissions

EQC will seek to process a charged request in the most cost-efficient manner possible for the requester. As per the current Ministry of Justice guidelines, the following charges can be made (inclusive of GST):

Item	Charge
Staff time	<ul style="list-style-type: none"> <li>\$38 per half hour, after the first hour of processing time is completed. This amount is fixed regardless of staff seniority, except where staff with specialist expertise who are not on salary (e.g. a specialist consultant) are required to process the request. In these cases, a higher rate not above the actual pay rate of the staff with specialist expertise may be charged</li> </ul>
Photocopying	<ul style="list-style-type: none"> <li>20c per page, after 20 pages have been photocopied<sup>2</sup></li> </ul>
General expenses of meeting a request. These costs can include: <ul style="list-style-type: none"> <li>reproducing film, video or audio recordings;</li> <li>purchasing discs or other storage devices that the information is provided on;</li> <li>retrieval of information off-site; or</li> <li>arranging for an applicant to hear or view and audio or video recording</li> </ul>	<ul style="list-style-type: none"> <li>Fixed at an amount which recovers up to the actual costs involved</li> </ul>
Commercially valuable information	<ul style="list-style-type: none"> <li>Fixed at an amount which recovers up to the actual costs involved. If further requests are made for the same information, then those requests are free</li> </ul>

### Deposit:

EQC has the right to request a deposit of up to the full chargeable amount if a charge is likely to exceed \$76. The deposit amount must be communicated to the customer as part of the initial correspondence advising of the

<sup>2</sup> Unless specifically requested, EQC seeks to respond to all requests electronically.

charge, and EQC can choose whether it will process the request before the deposit is paid. The deposit amount must be approved by the staff member with delegated authority, and must be confirmed to the requester in writing.

If the amount paid in the deposit exceeds the time taken by EQC staff to process the information for release, then the unused portion of the deposit is refunded back to the customer by either cheque or bank deposit (if the details have been provided by the customer).

*Remission of charges:*

EQC has discretion to remit a charge either in whole or part. In making this decision, EQC will consider the following factors:

- i. **Public Interest:** EQC must always consider whether there is a public interest in the information being made available to the requester. The questions EQC will consider are whether there is a public interest in making the information generally available, in which case it would be unfair for the requester alone to bear the cost, or whether the information is of special relevance to the requester giving rise to a broader public interest in release to that person. Meeting requests made by an academic researcher, Member of Parliament, political party researcher, or member of the news media may be in the public interest. In these situations, a charge may be reduced or remitted entirely.
- ii. **Hardship:** Hardship either relates to the financial means of the requester, or whether the size of the proposed charge is something the requester can meet and still afford business and life essentials. While EQC does not need to know the financial capabilities of the requester, EQC will ensure any decision to charge is reasonable.
- iii. The Ombudsman has concluded that in many cases, hardship alone is not sufficient to warrant a full remission of an otherwise reasonable charge.