

Charging

A guide to charging for official information under the OIA and LGOIMA

Agencies can make reasonable charges for supplying official information under the OIA and LGOIMA.

This guide explains:

- *when it is reasonable to charge;*
- *what an agency can charge for;*
- *what is a reasonable charge; and*
- *how to charge.*

It also has practical resources including a step-by-step work sheet for charging, a template charging letter and a sample estimate of costs.

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What the Acts say

There is no specific charging provision in the OIA and LGOIMA. What they say about charging is found in the section dealing with decisions on requests ([section 15 of the OIA](#) and [section 13 of the LGOIMA](#)). In essence:

- An agency ‘*may charge for the supply of official information*’.¹
- An agency that receives a request for official information must, within the statutory or extended timeframe,² make and communicate its decision ‘*whether the request is to be granted and [if so] in what manner and for what charge (if any)*’.³
- 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.⁴
- An agency can require the whole or part of any charge to be paid in advance.⁵
- Complaints about charges can be investigated by the Ombudsman.⁶

This means that agencies can impose a **reasonable** charge—subject to external review by the Ombudsman—to recover some of the costs of actually making the information available.

Charge means release

In order to charge, an agency must have already decided to release at least some of the information at issue. This is because the legislation **only authorises a charge to be made:**

- at the same time as a **decision to grant the request**;⁷
- for the **supply** of official information.⁸

No charge can be made in respect of information that is withheld.

¹ See s 15(1A) OIA and s 13(1A) LGOIMA.

² For more information about timeframes, see our guides [The OIA for Ministers and agencies](#) and [The LGOIMA for local government agencies](#).

³ See s 15(1)(a) OIA and s 13(1)(a) LGOIMA.

⁴ See s 15(2) OIA and s 13(3) LGOIMA. Note also s 13(2) LGOIMA, which provides that any charge ‘*shall not exceed the prescribed amount*’. However, no prescribed amount has ever been set.

⁵ See s 15(3) OIA and s 13(4) LGOIMA.

⁶ See s 28(1)(b) OIA and s 27(1)(b) LGOIMA.

⁷ An agency must decide ‘*whether the request is to be granted and [if so] in what manner and for what charge*’—see s 15(1)(a) OIA and s 13(1)(a) LGOIMA.

⁸ An agency ‘*may charge for the supply of official information*’—see s 15(1A) OIA and s 13(1A) LGOIMA.

When is it reasonable to charge?

It is not generally reasonable to charge for complying with **simple requests**. However, it may be reasonable to recover some of the costs associated with requests for information that would require **considerable labour and materials**. As the Committee that recommended the enactment of the OIA (the Danks Committee) noted:⁹

*Doubtless many enquiries, as at present, will be capable of ready and convenient response. To levy fees or charges other than for copying at the ‘easy’ end of answering would be seen as obstructive, and would frustrate the openness we seek. But some enquiries will doubtless engage **considerable** time and attention when less obviously available answers are sought. Search, abstraction, collation and copying could combine into formidable workloads. Even if research or quasi-research activities are firmly ruled out and the simpler enquiries are allowed to be free, there is left a middle ground where charging will be warrantable. (Emphasis added).*

What is ‘*considerable*’, in terms of the labour and materials required, will depend on the circumstances of the case, including the extent of resources available to the agency to deal with the request. What is ‘*considerable*’ for a small agency with few resources will not be the same as what is ‘*considerable*’ for a large agency with lots of resources. It may be reasonable to charge if a request will have a **significant impact** on the agency’s ability to carry out its other operations.

When a request is so considerable that it would require ‘*substantial collation or research*’ to make the information available, agencies are expressly required to consider whether charging would enable the request to be met.¹⁰

It may also be relevant to consider the requester’s recent conduct. If the requester has previously made a **large volume of time-consuming** requests to an agency, it may be reasonable to start charging in order to recover some of the costs associated with meeting further requests.

Note, however, that some requesters (for example, MPs and members of the news media), may have good reasons for making frequent requests for official information, and they should not be penalised for doing so (see [Is it reasonable to charge MPs and parliamentary research units](#) and [Is it reasonable to charge the news media?](#)).

⁹ Committee on Official Information. [Towards Open Government: Supplementary Report](#) (July 1981) at 35.

¹⁰ See ss 18(f) and 18A(1)(a) OIA and ss 17(f) and 17A(1)(a) LGOIMA.

What can an agency charge for?

Charging under the OIA and LGOIMA is not generally about full cost-recovery.¹¹ Full cost-recovery would be inconsistent with the purpose of the legislation, which is to progressively increase the availability of official information to the people of New Zealand. As the Law Commission has noted:¹²

*The role of charging in the official information process has never been a full cost-recovery exercise. Where charges are applied they represent a **partial** recovery of **some** aspects of agency time and other costs incurred in responding to requests (emphasis added).*

Hence there are:

- [activities that can be charged for](#); and
- [activities that can't be charged for](#).

The key restriction is that agencies cannot charge for **time spent deciding** whether or not to release information. This is because charges are only authorised for the **supply** of official information, in the context of a decision having **already been made** to grant the request (see [Charge means release](#)).

There is a cost associated with agency compliance with the official information legislation. However, as the Danks Committee observed, that cost is **part of the government's responsibility** to keep people informed of its activities (the term '*government*' being read in the widest possible sense).¹³

The official information legislation is an **important part of New Zealand's constitution**,¹⁴ and processing official information requests is a **core agency function**. Costs that cannot be passed on to the requester must be carried by the agency, both in infrastructural terms, and in its administrative and budgeting arrangements.

¹¹ It may be reasonable to recover the full costs of supply in some limited circumstances, see [Charging for commercially valuable information](#).

¹² Law Commission. *The Public's Right to Know: Review of the Official Information Legislation*. (NZLC R125, 2012) at 202.

¹³ Committee on Official Information. [Towards Open Government: General Report](#) (December 1980) at 37.

¹⁴ The OIA has been described as '*a constitutional measure*' (*Commissioner of Police v Ombudsman* [1988] 1 NZLR 385 (CA) at 391), and '*an important component of New Zealand's constitutional matrix*' (*Kelsey v the Minister of Trade* [2015] NZHC 2497 at paragraph 19).

Activities that can be charged for

Remember, these can only be calculated once the decision on release has already been made (see [Charge means release](#)).

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

Activities that can't be charged for

Decision making See case 178413	<ul style="list-style-type: none"> • Work required to decide whether to grant the request in whole or part, including: <ul style="list-style-type: none"> - reading and reviewing to decide on withholding or release; - seeking legal advice to decide on withholding or release; - consultation to decide on withholding or release; and - peer review of the decision to withhold or release. • Work required to decide whether to charge and if so, how much, including estimating the charge.
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<p>Administrative inefficiencies or poor record-keeping</p> <p>See case 172047</p>	<ul style="list-style-type: none"> • Searching for / retrieving information that is not where it should be because of administrative inefficiencies or poor record-keeping
<p>Administrative costs associated with the way an agency chooses to process a request</p> <p>See case 177195</p>	<ul style="list-style-type: none"> • Drafting a cover letter • Drafting a briefing for the Minister • Formatting information in a way preferred by the agency but not sought by the requester
<p>Costs not directly related to supplying the information</p> <p>See case 307851</p>	<ul style="list-style-type: none"> • General overheads, including costs of establishing and maintaining systems and storage facilities

What is a reasonable charge?

In most cases, a charge will be reasonable if it has been set:

1. in accordance with the current Government [Charging Guidelines](#) (or **equivalent** charging policy); and
2. with due regard to any circumstances warranting [remission](#).

Charging Guidelines

The Government has issued *Charging Guidelines* to be followed by agencies subject to the OIA. These can be accessed from the Ministry of Justice website www.justice.govt.nz.

Successive Ombudsmen have accepted that charges set in accordance with the *Charging Guidelines* are reasonable, provided due regard has been paid to any circumstances warranting remission (see [Remission of charges](#)).

The *Charging Guidelines* specify standard charges of:

- \$38 per half hour of staff time in excess of one hour; and
- \$0.20 per page for photocopying in excess of 20 pages.

An agency may be justified in charging higher rates for staff time where staff with **specialist expertise** that are **not on salary** (ie, contractors) are **required** to process the request, in which case a rate not exceeding their actual rate of pay per hour may be charged.

Although the *Charging Guidelines* do not apply to **local government agencies**, it is reasonable for such agencies to make their charging decisions in accordance with the guidelines (see cases [176345 and 368207](#) and [307851](#)).

Agencies may develop their own charging policies (see [Developing a charging policy](#)). However, the application of an internal charging policy that is inconsistent with the *Charging Guidelines*, for example, by charging higher rates for staff time or photocopying, risks an Ombudsman's finding on review that the charge in question was unreasonable (also see cases [176345 and 368207](#) and [307851](#)).

Remission of charges

The setting of a 'reasonable' charge for supplying official information requires due regard to be given to any circumstances warranting remission. Remission means reducing or cancelling the charge that would otherwise be set. Remission may be warranted because:

- there is a compelling [public interest](#) in making the information available; and/or
- meeting the charge would be likely to cause [hardship](#) to the requester.

Remission in the public interest

Agencies must consider whether there are any circumstances warranting remission of the charge in the public interest.

Read our guide to the [Public interest](#), which sets out some example public interest considerations favouring release of official information, and some factors that can affect the weight of the public interest in release.¹⁵

The [Charging Guidelines](#) also set out some public interest considerations and questions that should be considered by agencies before imposing a charge. As noted above, these guidelines can be accessed from the Ministry of Justice website www.justice.govt.nz.

In addition, the following questions are relevant:

1. Is there a public interest in making the information **generally available**—that is, not just to the requester? If so, it may be unreasonable to make the requester alone bear the cost of release (see case [274689](#)).
2. Does the information have **special relevance** to the requester? If the personal interests of the requester give rise to a broader public interest in release to that person (for example, to promote procedural fairness), it may be unreasonable to charge, or to charge the full amount.

¹⁵ While this is a guide to conducting the public interest test in section 9(1) of the OIA (section 7(1) of the LGOIMA), the same considerations are relevant in deciding whether remission of charges is warranted in the public interest.

In cases [274689](#), [172047](#) and [W50332](#) the Ombudsman concluded the charge should be remitted wholly or in part due to the public interest. In cases [400121](#), [319893](#), [302392](#), [178468](#) and [177195](#) the Ombudsmen concluded the public interest did not require remission of the charge.

Remission due to hardship

Agencies must also consider whether meeting the charge would be likely to cause hardship to the requester. Hardship means the charge will be **excessively costly** for the requester to bear, such that the requester will be unable to meet the charge and still afford the essentials for life or business.

Whether hardship is likely to occur will depend on the level of the proposed charge and the financial means of the requester. An agency should consider what it already knows about the financial means of the requester (if anything), as well as any information advanced by the requester in support of an assertion of limited means. It does not have to actively enquire into a requester's financial means before deciding to impose a charge.

In a number of cases, the Ombudsmen have concluded that hardship **on its own** is insufficient reason to remit an otherwise reasonable charge **in full**. There should also be some other public interest factors favouring disclosure of the information (see cases [177195](#) and [178486](#)).

Is it reasonable to charge MPs and parliamentary research units?

There is nothing in the legislation which says that MPs and parliamentary research units cannot be charged for the supply of official information. However, the usual approach has been to remit any charge that would otherwise have been fixed, in recognition of the public interest in MPs having access to official information to assist in the reasonable exercise of their democratic responsibilities.

The *Charging Guidelines* state:¹⁶

Members of Parliament may be exempted from charges for official information provided for their own use. This discretion may be extended to cover political party parliamentary research units when the request for official information has the endorsement of a Member of Parliament. In exercising this discretion it would be appropriate to consider whether remission of charges would be consistent with the need to provide more open access to official information for Members of Parliament in terms of the reasonable exercise of their democratic responsibilities.

There are important reasons for not charging MPs and parliamentary research units:¹⁷

[These include] the Opposition's limited resources, and the constitutional importance of the [OIA] (and the parliamentary question procedure) as means of

¹⁶ See paragraph 7.4 of the *Charging Guidelines*.

¹⁷ Law Commission. *Review of the Official Information Act 1982* (NZLC R40, 1997) at 57.

keeping the executive accountable to the legislature. Scrutiny and control over the activities of the government have long been recognised as amongst Parliament's most important functions. Indeed, s 4 of the Act expressly refers to 'the principle of the Executive Government's responsibility to Parliament'. Because of the whip system and other forms of party discipline, the scrutiny and control functions in practice fall largely on the Opposition; to exercise them effectively it must have access to information. Replies to Opposition requests for official information and parliamentary questions, published or broadcast in the media, in turn form an important source of information to the public about the activities of government.

These important reasons mean it will often be unreasonable to charge MPs and parliamentary research units for the supply of official information.

However, charging MPs and parliamentary research units is permissible under the legislation, and may be reasonable in some circumstances. As the Law Commission noted in 2012:¹⁸

*There is no reason why **unreasonable** political requests should be completely exempt. Voluminous and unrefined requests from parliamentary research units can cause a great deal of expenditure of resources. The charging mechanism should be available to agencies as a defence mechanism in appropriate cases, regardless of the source of the request (emphasis added).*

The Ombudsman has, on occasion, upheld charges against MPs who have made excessively burdensome requests (see case [172047](#)).

Is it reasonable to charge the news media?

Members of the news media¹⁹ are in the same position as any other requester when it comes to charging. A reasonable charge may be imposed, in accordance with the *Charging Guidelines*, and with due regard to any circumstances warranting remission.

However, when assessing whether remission is warranted in the public interest, agencies should consider the **important democratic and constitutional role of the news media** in informing members of the public. As the courts have recognised (in articulating the rationale for openness in judicial proceedings), the news media act as the *'surrogates of the public'*.²⁰ The public interest role performed by the news media may make it unreasonable, in the circumstances of the particular case, to charge, or to charge the full amount.

¹⁸ Note [12](#) at 211.

¹⁹ Following the definition in [s 68\(5\) of the Evidence Act 2006](#), 'news media' is media for the dissemination to the public or a section of the public of news and observations on news. Following the judgment of the High Court in *Slater v Blomfield* [2014] NZHC 2221, this can include a blogger who regularly disseminates news (ie, new information about recent events or events of interest to the public), or observations on news, to a significant body of the public.

²⁰ *R v Liddell* [1995] 1 NZLR 538, 546–547.

In case [179387](#), the Ombudsman concluded that notwithstanding the media's important function of informing the public on matters of public interest, it was reasonable to charge for the requested information.

Charging for commercially valuable information

As noted earlier, charging under the OIA and LGOIMA is not generally about full cost-recovery (see [What can an agency charge for?](#)). However, it may be reasonable to recover the full costs of supplying information of commercial value to the requester. This is on the basis that the cost will generally be able to be recovered as some form of business expense.

The *Charging Guidelines* say:²¹

It is reasonable to recover actual costs involved in producing and supplying information of commercial value. However, the full cost of producing it in the first instance should not be charged to subsequent requesters.

Agencies should first be satisfied that the requester:

- has a commercial (ie, profit seeking) motive; and
- is likely to use the information to generate a profit.

As in any case, it will still be necessary to consider the [public interest in remission](#) of the proposed charge. One relevant consideration in this context is the public interest in promoting commercial innovation and economic growth, which is recognised by the Government's open data initiatives (see www.digital.govt.nz).

For an example of a case where the agency tried to recover the actual cost of supplying information it considered commercially valuable see [172531](#).

How to charge

This section provides advice on how to charge, including [calculating the charge](#), and [communicating the decision to charge](#). There can be a bit of work involved in charging, and not all requesters are prepared to pay a charge—particularly a large one. This makes it **very important** to [engage with the requester](#) as early as possible, and to consider [options for reducing or removing the need to charge](#).

Some basics

The basic order of charging looks like this.

1. Decide to release the information.
2. Calculate the charge. (See [Calculating the charge](#) for details of how to do this.)

²¹ See paragraph 6.1 of the *Charging Guidelines*.

3. Communicate the decision to release the information subject to a charge, as soon as reasonably practicable and no later than 20 working days after the day the request was received (unless that timeframe is extended).²² (See [Communicating the decision to charge](#) for the details that should be included.)
4. Await payment of the deposit (if applicable) and/or confirmation that the requester accepts the charge.
5. Prepare the information for release.
6. Release the information without '*undue delay*'.²³

The decision to charge has to be communicated at the same time as the decision to release some or all of the requested information (see [Charge means release](#)). This means it must be done within the statutory (maximum 20 working days), or extended timeframe.

It is just the **decision** on the request (including the decision to charge) that has to be communicated within this timeframe. The obligation in terms of **releasing** the information is to do so without '*undue delay*'.²⁴ A delay occasioned solely by awaiting confirmation that the requester has accepted the charge or paid the deposit (if applicable) will not be undue.

It is necessary to spend some time scoping the request and reviewing the information in order to decide that the request can be granted and calculate the charge. However, an agency **should not start preparing** the information for release until after the requester has accepted the charge or paid the deposit (if applicable). Otherwise the agency will have wasted its time preparing the information for release if the requester does not agree to pay the charge.

Can an agency charge if it has breached the statutory or extended timeframe for making a decision?

Yes. However, agencies should consider whether their breach of timeframes would make it unreasonable to charge, or to charge the full amount. Where there have been significant delays, or delays resulting from the agency's own administrative failings, a reduction in the charge may be warranted.

Can an agency charge after it has already released the information?

No. Decisions on charges must be made at the same time as the decision to release the information. This gives the requester the opportunity to refine or withdraw their request in order to avoid the charge.

In case [W45424](#), the Airways Corporation sought to impose a substantial charge six weeks after having already made the information available. At no stage had the requester been advised that a charge was contemplated. The Ombudsman found that

²² See ss 15(1)(a) and 15A OIA and ss 13(1)(a) and 14 LGOIMA.

²³ See s 28(5) OIA and s 27(5) LGOIMA.

²⁴ See s 28(5) OIA and s 27(5) LGOIMA.

Airways was not entitled to levy a charge, because it had not done so in accordance with the legislation (section 15(1) of the OIA).

Calculating the charge

A charge is calculated by estimating:

- the volume of information at issue, or that needs to be searched through to find the information at issue;
- the time required to complete the [activities that can be charged for](#);
 - search and retrieval;
 - collation (bringing together the information at issue);
 - research (reading and reviewing to identify the information at issue);
 - editing (the physical task of excising or redacting withheld information);
 - scanning or copying;
 - reasonably required peer review in order to ensure that the above tasks have been carried out correctly; and
- the cost of any materials, for example, paper for photocopying.

Estimating the **volume** of information at issue is made easier with modern email and document management systems. These can be interrogated using appropriate search terms to estimate the total number of potentially relevant documents.

The **time required** can be estimated by adopting some reasonable assumptions about how long it will take to complete the [activities that can be charged for](#). The best way of establishing these assumptions is to carry out a sample exercise; that is, by timing how long it takes to do the chargeable activities for a representative sample of the information, and using that to extrapolate an estimated total.

Formula for charging

$$(((\text{Estimated hours staff time}] - 1) \times \$76) + (((\text{Estimated pages to be photocopied}] - 20) \times \$0.20) = [\text{Amount agency may wish to consider charging}]$$

Case [302392](#) provides an example of how an agency and the Ombudsman went about estimating the work involved in processing a request and calculating a reasonable charge. There is also a [sample estimate of costs](#) in the appendix to this guide that agencies can use as a basis for calculating charges.

Can a charge be increased?

The Acts talk about charges being **'fixed'**. This suggests that the amount of the charge should be **ascertainable** and reasonably **certain** by the time a decision is made on the request.

This makes it important for agencies to **take the time up front** to adequately scope the request. Scoping the request means interpreting the request (what is the requester asking for?), and identifying the information (what do we hold and where?). Adequate scoping is essential for the calculation of accurate charges.

In preference to having to increase a charge, agencies should aim to calculate the **maximum** charge to the requester, and explain that any unused component of that charge will be refunded.

It may be unreasonable to subsequently increase a charge that has already been fixed and agreed to by the requester, particularly if the increase is substantial and/or the requester has not been adequately forewarned of that possibility (see case [176924](#)). It may also be unreasonable for an agency to change its mind, and subsequently seek to refuse a request that was previously granted subject to a charge (see case [304081](#)).

Communicating the decision to charge

As noted earlier (see [Some basics](#)), the decision to supply information subject to a charge must be communicated as soon as reasonably practicable and no later than 20 working days after the day the request was received (unless that timeframe is extended).

The decision to charge should explain the following:

- that the agency has decided to grant the request (or part of the request) for payment of a charge;
- the maximum amount of the charge;
- how the charge has been calculated (agencies can use the [sample estimate of costs](#) in the appendix to this guide);
- whether all or part payment of the charge is required in advance of release of the information and, if so, how payment can be made;
- the timeframe within which the information will be released once the charge is accepted and (if applicable) the deposit paid;
- that the requester has the right to complain to the Ombudsman about the decision to charge.

Where only part of the request is being granted, the information to be released should be described in sufficient detail to enable the requester to decide whether it is worth paying the charge.

Agencies should also provide the contact details of a subject matter expert who can provide reasonable assistance to the requester if they wish to change or refine their request in a way that reduces or removes the need to charge.

There is a [template charging letter](#) in the appendix to this guide.

Engaging with the requester

Engaging with the requester is in everyone's best interests. It means the requester is more likely to get what they want in the most efficient way possible.

The purpose of engaging with the requester is to clarify the request and to help them change or refine it in a way that reduces or removes the need to charge. Some requesters simply do not understand how much information is held, and how much effort will be needed to provide it. Some will be content with a narrowed-down request, or to receive only a few key documents among the many available, or to see a list of titles from which they can choose (see [Options for reducing or removing the need to charge](#)).

The earlier engagement takes place the better. Calculating a charge requires adequate scoping and careful estimation. This is wasted time if the requester is not prepared to pay a charge, or a charge of the magnitude being contemplated. Often the best way of engaging with a requester is a face-to-face discussion or a discussion over the telephone. The following text box has some talking points that agencies could use in a discussion with the requester or adapt for written communications.

Talking points—Engaging with requesters

Here are some talking points for engaging with requesters.

- *'It's a really big request'*: Explain that it will take considerable labour and materials to meet the request as it is currently framed.
- *'We think it will take this much work'*: Give any early order estimates of the volume of information at issue, the amount of time required to process the request, and the impact on the agency's other operations.
- *'We're thinking of charging'*: Explain that unless the request is changed or refined the agency is likely to impose a charge.
- *'We want to help you refine it'*: Explain that the agency wants to work with the requester to change or refine the request in a way that reduces or removes the need to charge.
- *'Here are some of our ideas for how the request could be refined or met without having to charge'*: Canvass any [Options for reducing or removing the need to charge](#).

- *'Here's who can help'*: Provide contact details for a subject matter expert who can provide reasonable assistance to the requester to change or refine their request.

Note that in certain circumstances, an agency may be justified in treating any amended or clarified request as a new request for the purpose of calculating the maximum timeframe for response.²⁵

Options for reducing or removing the need to charge

It is important to consider whether there are other ways to meet the request that would reduce or remove the need to charge. For example:

- Identifying relevant information that is readily retrievable and able to be supplied free of charge (see cases [319893](#) and [376161](#)).
- Refining the time period covered by the request.
- Refining the types of document covered by the request. For example, document types can include: emails, draft papers/reports, final papers/reports, reports or briefings to Ministers, aides-memoire, and Cabinet papers. Requesters may be happy to receive key documents (such as final papers/reports, or reports/briefings to Ministers or Cabinet), if they understand that their request for all information on a subject is problematic and may be met with a charge.
- Providing a list of the documents that are potentially in scope of the request, if one can be generated through the agency's document management system.
- Limiting search terms by agreement with the requester, thereby yielding a smaller number of more relevant results.
- Providing the information in electronic form, in order to avoid the need for photocopying charges.²⁶
- Providing the information at issue in an alternative form (for example, an opportunity to inspect the information or receive an oral briefing on the information),²⁷ and/or subject to conditions on publication or dissemination (see case [173607](#)).²⁸ This is permissible

²⁵ See ss 15(1AA) and (1AB) of the OIA and ss 13(7) and (8) of the LGOIMA. See also *'Amended or clarified requests'* in [The OIA for Ministers and agencies](#) or [The LGOIMA for local government agencies](#).

²⁶ See s 16(1A) OIA and s 15(1A) LGOIMA.

²⁷ See s 16(1) OIA and s 15(1) LGOIMA. For more information about the form of release see *'Deciding how to release information'* in [The OIA for Ministers and agencies](#) or [The LGOIMA for local government agencies](#).

²⁸ See s 28(1)(c) OIA and s 27(1)(c) LGOIMA. For more information about imposing conditions on the use, communication or publication of information see *'Conditional release'* in [The OIA for Ministers and agencies](#) or [The LGOIMA for local government agencies](#). Note, in particular, that conditions are not enforceable under the official information legislation.

where supplying the information in the way preferred by the requester would ‘*impair efficient administration*’ (among other reasons).²⁹ The requester may prefer to receive the information in an alternative form than to pay a charge.

Developing a charging policy

Agencies may wish to develop their own charging policies. In addition to being consistent with the law, internal charging policies should meet the following criteria:

- They should be consistent with the *Charging Guidelines*.

Agencies subject to the OIA are generally required to follow the *Charging Guidelines* (the *Guidelines* say they should be followed ‘*in all cases unless good reason exists for not doing so*’). Agencies subject to the LGOIMA are not required to follow the *Charging Guidelines*. However the application of an internal charging policy that is inconsistent with the *Charging Guidelines*, for example, by charging higher rates for staff time or photocopying, risks an Ombudsman’s finding on review that the charge in question was unreasonable (see cases [307851](#) and [176345 and 368207](#)). Inconsistency with the *Charging Guidelines* may be justifiable if it works in the requester’s favour, for instance, by charging lower rates for staff time or photocopying, or by allowing a longer free period before the ability to charge kicks in.

- They should be applied on a case by case basis.

The blanket application of a charging policy (for example, by applying a ‘*standard charge*’) without regard to the circumstances of a particular case is unreasonable. Any internal charging policy must retain the flexibility to remit a charge in whole or part where that is warranted in the circumstances of the case. Specific regard must be had to the public interest in making the information available (see [Remission in the public interest](#)), and whether meeting the charge would be likely to cause hardship to the requester (see [Remission due to hardship](#)).

- They should be publicly available.

Agencies that have adopted an internal charging policy should make it available to the public on their website. This is the type of internal decision making rule that people have a right to access under section 22 of the OIA (section 21 of the LGOIMA).

Our staff are able to provide advice and guidance to agencies developing internal charging policies, including reviewing and commenting on draft policies (see [Further guidance](#)).

²⁹ See s 16(2) OIA and s 15(2) LGOIMA.

Other types of charge

Charges set by other enactments

Where a charge for access to official information is set by another Act, or by regulations in force immediately before the OIA (or LGOIMA),³⁰ that Act or those regulations will prevail. This is because there is a savings provision in the OIA and LGOIMA, which provides that nothing in the legislation derogates from any provision in any other Act, or in any regulation in force immediately before the OIA (or LGOIMA), which regulates the manner in which official information may be obtained or made available.³¹ See case [319893](#).

Information for sale

Some agencies are in the business of selling information. This includes:

- official information (that is, information that is already **held** by an agency); and
- information that an agency has the ability to **create**.

Official information available for purchase

Where official information is available to purchase to any person for a set fee, it may be open to an agency to refuse a request for that information under the OIA or LGOIMA on the basis that it is already publicly available.³² This is provided the purchase price is not patently excessive. See case [177600](#).

Information that can be created for a fee

Where information can be **created** for a fee the OIA and LGOIMA will not apply; nor will the *Charging Guidelines*. This is because the OIA and LGOIMA only apply to information that is already **held** by an agency.³³ However, an agency will need to be able to demonstrate affirmatively that it would need to create the information, as opposed to collating information that is already held.

Any complaint about the fee for creation of information cannot be considered by the Ombudsman under the OIA or LGOIMA. However, the Ombudsman may be able to consider a complaint about the reasonableness of the fee under the Ombudsmen Act 1975.³⁴ See case [376161](#).

³⁰ 1 July 1983 for the OIA; 1 March 1988 for the LGOIMA.

³¹ See s 52(3)(b)(ii) OIA and s 44(2)(b)(ii) LGOIMA.

³² See s 18(d) OIA and s 17(d) LGOIMA.

³³ See s 2 OIA and LGOIMA.

³⁴ Provided the agency is subject to that Act.

Further guidance

For more information about processing official information requests, see our guides [The OIA for Ministers and agencies](#) and [The LGOIMA for local government agencies](#).

Our website contains searchable case notes, opinions and other material, relating to past cases considered by the Ombudsmen: www.ombudsman.parliament.nz.

You can also contact our staff with any queries about charging, or for advice and guidance on developing an internal charging policy, by email info@ombudsman.parliament.nz or freephone 0800 802 602. Do so as early as possible to ensure we can answer your queries without delaying the response to a request for official information.

Appendix 1. Step-by-step work sheet for charging

<p>1. Scope the request</p>	<ul style="list-style-type: none"> • What is the requester asking for? • What information is held and where? • Engage with the requester as early as possible about any ambiguities or scope for refinement of the request.
<p>2. Decide on release</p>	<ul style="list-style-type: none"> • Are you going to release some or all of the information? • Charging is only permissible if information is being released in response to the request, so you may need to read and review the information first in order to decide to what extent it can be made available (see Charge means release).
<p>3. Consider whether it is reasonable to charge</p> <p>Relevant part of guide: When is it reasonable to charge?</p>	<ul style="list-style-type: none"> • Is it reasonable to recover some of the costs involved in releasing the information? • Relevant questions include: <ul style="list-style-type: none"> - Will it require considerable labour and materials to release the information? - Will it have a significant impact on the agency's ability to carry out its other operations? - Has the requester previously made a large volume of time consuming requests? Note that some requesters (for example, MPs and members of the news media) may have good reasons for making frequent requests for official information, and they should not be penalised for this.
<p>4. Engage with the requester</p> <p>Relevant part of guide: Engaging with the requester</p>	<ul style="list-style-type: none"> • Engage with the requester to try and help them clarify the request, and change or refine it in a way that reduces or removes the need to charge. • Our Talking points can assist with this.
<p>5. Consider other options for reducing or removing the need to charge</p> <p>Relevant part of guide:</p>	<ul style="list-style-type: none"> • Are there other ways to meet the request that would reduce or remove the need to charge? For example: <ul style="list-style-type: none"> - providing readily retrievable information; - refining the time period covered by the request; - refining the types of document covered by the request;

<p>Options for reducing or removing the need to charge</p>	<ul style="list-style-type: none"> - providing a list of documents potentially in scope, so that the requester can refine the request; - limiting search terms by agreement with the requester; - providing the information in electronic form; - providing the information in an alternative form (eg, inspection or oral briefing); or - providing the information subject to conditions.
<p>6. Calculate the charge</p> <p>Relevant part of guide: Calculating the charge</p>	<ul style="list-style-type: none"> • How much information is at issue? • How long will it take to complete the activities that can be charged for? • Calculate the charge in accordance with the rates specified in the <i>Charging Guidelines</i> (see Formula for charging). • Our sample estimate of costs can help with this process.
<p>7. Consider whether the charge should be remitted in full or in part</p> <p>Relevant part of guide: Remission of charges</p>	<ul style="list-style-type: none"> • Should the charge be remitted in full or part because of the public interest in release? • Should the charge should be remitted in full or part because it would cause hardship to the requester?
<p>8. Communicate the decision to release subject to a charge</p> <p>Relevant part of guide: Communicating the decision to charge</p>	<ul style="list-style-type: none"> • This must be done as soon as reasonably practicable and within 20 working days of receipt of the request (unless that timeframe is extended). • Our template charging letter can assist with this. • Ensure that someone is available to the requester to assist them to change or refine their request in order to reduce or remove the need to charge.
<p>9. Prepare the information</p>	<ul style="list-style-type: none"> • Once the requester has accepted the charge and met any part of it required to be paid in advance, prepare the information for release.
<p>10. Release the information</p>	<ul style="list-style-type: none"> • Release the information without undue delay, and within the time period indicated in your letter of decision. Keep the requester up-to-date if unforeseen circumstances delay the release.

Appendix 2. Case studies

These case studies are published under the authority of the [Ombudsmen Rules 1989](#). They set out an Ombudsman's view on the facts of a particular case. They should not be taken as establishing any legal precedent that would bind an Ombudsman in future.

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Case number	Year	Subject
178413	2009	Animal usage statistics <i>Cannot charge for decision making time</i>
172047	2005	Request by MP for information about 42 community grants <i>Cannot charge for time required due to administrative inefficiencies or poor record-keeping—Public interest in MPs having access to official information to assist in the reasonable exercise of their democratic responsibilities warranted 10 per cent remission</i>
177195	2009	Seven years of board minutes <i>Cannot charge for administrative costs associated with the way an agency chooses to process a request—no remission of charge in the public interest / due to hardship</i>
307851	2012	Unreasonable photocopying charge <i>\$0.45 per page photocopying charge unreasonable</i>
176345 368207	2007 2014	Unreasonable staff rates <i>Staff rates in excess of those in the Charging Guidelines unreasonable</i>
274689	2010	Internal decision making rules <i>Full remission of labour component of the charge in the public interest</i>
W50332	2004	Information about international trade agreement <i>Full remission of charge in the public interest</i>
400121	2017	Information about academic misconduct by international students <i>No remission of charge in the public interest</i>
302392	2010	Correspondence regarding proposals to lower the drink-drive limit <i>Example of how to calculate a reasonable charge—no remission of charge in the public interest</i>

Case number	Year	Subject
319893	2012	<p>Information related to cycling fatalities</p> <p><i>Provision of readily retrievable information—no remission of charge for supplying the remaining information in the public interest—some information was available pursuant to a charging regime set by statute and the OIA could not override this</i></p>
178468	2009	<p>All information about Treaty claim over three year period</p> <p><i>No remission of charge in the public interest / due to hardship</i></p>
179387	2010	<p>Information about self-reported convictions of teachers</p> <p><i>Charge reduced on review—decision to charge news media requester not unreasonable</i></p>
172531	2007	<p>Information about a DOC Recommended Area for Protection</p> <p><i>Charging for commercially valuable information</i></p>
W45424	2001	<p>Charge imposed without forewarning after the provision of the information</p> <p><i>Charge for official information—information belatedly made available—requester subsequently charged for the information—no entitlement to charge</i></p>
176924	2009	<p>Information about the Southern Saltmarsh Mosquito Eradication Programme</p> <p><i>Unreasonable to increase charge that had already been fixed and agreed by the requester</i></p>
304081	2012	<p>Information about a hospice</p> <p><i>Unreasonable to refuse request after earlier deciding to supply information subject to a charge</i></p>
173607	2007	<p>Information about Maori interests in the management of petroleum</p> <p><i>Charge avoided by allowing inspection subject to conditions</i></p>
177600	2008	<p>Vehicle registration information available for purchase</p> <p><i>Request for information available for purchase could be refused on the basis that it was publicly available under section 18(d) OIA</i></p>
376161	2015	<p>Statistics that could be created for a fee</p> <p><i>OIA and Charging Guidelines did not apply to request for statistics that were not held but could be created for a fee—fee for the creation of statistics was calculated in accordance with the agency's Sales and Pricing Policy and was not unreasonable</i></p>

Case 178413 (2009)—Animal usage statistics

The then Ministry of Agriculture and Forestry (MAF) advised a charge of ‘at least \$3,000’ for supplying animal usage statistics, and the requester complained to the Ombudsman. During the Ombudsman’s investigation it was revealed that the bulk of the charge was for time required to consult with third parties affected by the request. The Ombudsman formed the provisional opinion that this time—which related to the decision whether or not to release or withhold the information—could not be charged for. After considering the Ombudsman’s provisional opinion, MAF reduced the charge to \$583. The Ombudsman concluded that this represented a reasonable charge for supplying the requested statistics.

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Case 172047 (2005)—MP request for information about 42 community grants

An MP made 42 OIA requests for information related to 42 separate grants made by the former Community Employment Group (CEG) of the then Department of Labour. The requested information included copies of contracts, evaluations, communications with the grantees, internal reports, and reports to the Minister. These repeated requests were aggregated for charging purposes, and the Department advised a charge of \$15,197.50. The requester complained to the Ombudsman.

The Ombudsman noted that some of the time required was to cope with a loss of institutional knowledge as a result of the disestablishment of the CEG. Even when the CEG was functioning, it was apparent that its administrative processes were less than robust, with an extremely old and unstable electronic database, which lacked a search function, and was incomplete and inconsistent with the corresponding paper files.

In the Ombudsman’s view, it would not be reasonable to make the requester bear the cost related to these administrative inefficiencies:

The requester should only have to meet costs that are comparable to those that would be reasonably charged by a properly-functioning administrative organisation where the processing of official information requests is a core output and funded accordingly.

The Ombudsman still accepted, however, that it would take approximately 3.25 hours to retrieve and collate the relevant information in respect of each of the 42 separate grants, requiring a total processing time of 136.5 hours. The Ombudsman formed the opinion that the charge should be reduced to \$10,298.

The Ombudsman also considered whether the charge should be remitted in recognition of the public interest in MPs having access to official information to assist in the reasonable exercise of their democratic responsibilities. However, he was not persuaded that the public interest justified remission of the entire charge. He

concluded the charge should be remitted by 10 per cent, resulting in a reasonable charge of \$9268.20.

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Case 177195 (2009)—Seven years of board minutes

ACC charged \$3,438 to supply 87 sets of board minutes dating from 2000–2007, and the requester complained to the Ombudsman.

ACC explained that the charge comprised labour costs of \$3,268 and photocopying costs of \$170. This was based on an estimated processing time of 30 minutes per board minute for *‘deleting the protected information, collating the material into a reasonable form, drafting a schedule explaining the grounds for withholding the protected information, and photocopying the altered documents’*. The Ombudsman found that some of these tasks were not activities that can be charged for, and that a revised estimate of 20 minutes processing time per board minute would be more reasonable. He noted that the primary cost of processing would come from decision making, and that the *Charging Guidelines* are clear this cost cannot be passed on to the requester. He did not accept that it was necessary to *‘collate the material into a reasonable form’*. Other than the making of minor deletions, no further work was required to release the board minutes in a *‘reasonable form’*. He also did not accept it was necessary to create a schedule explaining the withholding grounds: *‘This may be a particular agency’s preference, but the cost of creating this should not be passed on to the requester’*. The Ombudsman formed the provisional opinion, which was accepted by ACC, that the labour component of the charge should be reduced to \$2128.

The requester argued the entirety of this charge should be remitted in light of the public interest, and due to personal hardship.

In terms of the public interest, the Ombudsman accepted that disclosure of the minutes would promote transparency and contribute to public understanding of the organisation’s activities. However, the request covered a long time period, and much of the information was by then historic. The Ombudsman was not persuaded that disclosure of the information would represent such a significant contribution to the public interest that ACC should absorb the entire, quite considerable, cost of providing it.

In terms of hardship, the Ombudsman accepted the complainant’s evidence that meeting the charge would consume his annual disposable income. However, the Ombudsman did not regard lack of financial resources by itself as a sufficient reason to merit the waiving of an otherwise reasonable charge. The Ombudsman said he would also expect to be able to identify a general public interest consideration in favour of release and/or an aspect of special relevance to the requester.

The Ombudsman did not accept that the charge of \$2128 should be remitted due to the public interest or personal hardship to the requester.

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Case 307851 (2012)—Unreasonable photocopying charge

A council charged \$0.45 per page for photocopying building information, and the requester complained to the Ombudsman. The council explained that the \$0.45 per page charge reflected the additional cost to council of complying with the statutory requirement to keep building information for the life of the building (estimated to be 50 years minimum), as well as the ongoing maintenance costs associated with electronic storage of the files.

The Ombudsman was not persuaded there was any justification for exceeding the standard photocopying charge prescribed in the *Charging Guidelines* (\$0.20 per page for photocopying in excess of 20 pages).

The Ombudsman noted that section 13(3) of the LGOIMA talks about charges being set with regard to the cost of labour and materials involved in making the information available. While these are not the only matters to which regard may be had, establishment and maintenance costs for systems and storage facilities are not the kinds of costs contemplated by section 13(3). If that were the case, a cost for a service that is for the benefit of the entire community would be being passed on to an official information requester. The Ombudsman considered that a requester can be charged (within reason) for the extra costs generated by meeting a request, but that it is not reasonable to go beyond this.

The per page charge was reduced to \$0.20 in light of the Ombudsman's view, and the revised charge was found by the Ombudsman to be reasonable.

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Cases 176345 (2007) and 368207 (2014)—Unreasonable staff rates

Cases 176345 and 368207 involved councils charging higher hourly rates than those specified in the *Charging Guidelines*. The hourly rates were derived from their LGOIMA charging policies, adopted in the councils' annual plans. The rates varied depending on the seniority of the staff involved (in one case, the charge ranged between \$45/hour and \$125/hour, and in the other, the charge ranged between \$75/hour and \$121.83/hour).

In both cases, the Ombudsmen compared the proposed staff rates with those in the *Charging Guidelines*, noting that the latter rates applied irrespective of the seniority of the staff members involved. The Ombudsmen also noted there was no suggestion in either case that staff with specialist expertise were required to process the request. The higher staff rates were found to be unreasonable, as was the decision to charge different rates depending on the seniority of the staff members involved.

In case 176345, the Ombudsman suggested that the Council consider amending its current scale of charges for the supply of official information to bring them in to line with the *Charging Guidelines*. In case 368207, the Ombudsman noted that the official

information legislation does not contemplate full cost recovery for providing information, and that adequate funding should be provided for in agency budgets in order to perform their statutory functions.

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Case 274689 (2010)—Internal decision making rules

The Customs Service (Customs) charged \$2,037.80 to supply a copy of its policies on checking passengers and their baggage, and the requester complained to the Ombudsman. The Ombudsman noted that this type of information is covered by section 22 of the OIA, which provides a right of access to the internal rules that agencies use to make decisions affecting people. He considered that release of policies and procedures about how searches are carried out, and the rights afforded to those whose person and baggage is searched, would be likely to enhance public awareness of Customs' role at the border and help ensure that that role is carried out properly and that Customs is accountable for its actions. The Ombudsman found that the public interest in general availability of the information made Customs' decision to charge one requester a substantial amount unreasonable. In the Ombudsman's view, Customs was only justified in charging reasonable photocopying costs, which were calculated in accordance with the *Charging Guidelines* to be \$18.20. The Ombudsman also encouraged Customs to make the information available to the public online.

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Case W50332 (2004)—Information about international trade agreement

The Minister for Trade Negotiations charged an academic requester \$620 to supply information about the *General Agreement on Trade in Services* (GATS). The requester complained to the Ombudsman. The Ombudsman recommended full remission of the charge in the public interest. He noted that the GATS was a matter of substantial public interest in terms of New Zealand's economic concerns. He considered that public understanding of this major public issue was best served by maximising the availability of information so that source material may be analysed for public discussion by a variety of parties. Members of the public are entitled to take a contrary view to the government and the OIA envisages that individuals may access information in order to participate in debate in their own way. In this case, the complainant sought the information in order to undertake research which ultimately would be made publicly available for discussion and debate, and the Ombudsman was of the view that any charge would hinder such access. You can read the full case note [here](#).

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Case 400121—Information about academic misconduct by international students

Victoria University supplied a requester with statistics on instances of academic misconduct, but imposed a charge of \$1064 to provide a breakdown of whether those

instances involved domestic or international students. The University advised that the domestic/international status of students was not recorded within its academic misconduct register and would need to be collated by cross-checking that register against its central student record system. It calculated that 14 hours of staff time would be required to complete this task, based on an estimated 1 minute for each of the 625 instances of misconduct, plus three hours contingency time.

The Ombudsman noted that the first hour of staff time had not been allowed free of charge, but in other respects the estimated staff time was reasonable, and the charge was calculated in accordance with the *Charging Guidelines*. He went on to consider whether the charge should be remitted in the public interest.

He noted the University's decision to charge might appear unsatisfactory when set against the decision of other universities to supply the same or similar information for free. This could have been because there was less information at issue or different systems for recording it, or because the university opted to bear the cost itself.

However, the Ombudsman considered that the fact other universities had no reason to charge or opted not to do so did not automatically mean that the decision of the University in this case was therefore unreasonable. If the University's academic misconduct register included the students' domestic / international status, collating the information requested would have been less time-consuming. However, with no reason to conclude that the University should have been recording that information in its register, the Ombudsman did not consider that it could be criticised for not doing so.

The Ombudsman found that there is a public interest in ensuring that instances of academic misconduct are identified, investigated and concluded appropriately, but that it is not necessary for those purposes to identify whether the students involved are domestic or international.

The Ombudsman considered whether there is a public interest in the University itself knowing the domestic / international breakdown of students involved in academic misconduct, to determine whether its efforts to prevent misconduct are appropriately targeted. However, he accepted that the University had other mechanisms for addressing academic misconduct, and services that could potentially pick up on, and respond to, particular concerns or trends.

The Ombudsman concluded that there was no countervailing public interest in making the information available, such that, in the circumstances of this case, it was unreasonable for the University to decide against reducing or cancelling the charge.

You can read the full case note [here](#).

Case 302392 (2010)—Correspondence regarding proposals to lower the drink-drive limit

The Ministry of Transport charged \$9,220 to supply all correspondence received by the Minister from July 2009–November 2010 regarding proposals to lower the drink-drive limit and the Land Transport Amendment Bill. The requester complained to the Ombudsman. The charge was revised down to \$3,262.20 during the Ombudsman’s investigation.

The Ministry and the Ombudsman’s investigator together searched the Ministry’s database for correspondence received between July 2009 and November 2010 with the following search terms:

- *‘blood alcohol concentration limit’; or*
- *‘lowering of the BAC’; or*
- *‘drink driving’; or*
- *‘BAC limit’; or*
- *‘Land Transport (Road Safety and Other Matters) Amendment Bill’.*

The search returned 1180 potentially relevant documents.

The Ministry and the Ombudsman’s investigator then reviewed a sample of the documents, and agreed upon the following assumptions regarding the chargeable activities required to process the request:

- Search database: 15 minutes;
- Review document to confirm within scope: 5 hours (15 seconds per document);
- Open and print each letter/email: 10 hours (30 seconds per document);
- Prepare documents for photocopying: 20 hours (1 minute per document); and
- Time spent photocopying: 5 hours (15 seconds per document).

This came to an estimated maximum of 40.25 hours processing time, plus photocopying for 1416 pages. Applying the [charging formula](#) ($40.25 - 1 \times \$76 + 1416 - 20 \times \0.20) resulted in a charge of \$3,262.20.

The Ombudsman also considered whether that charge should be remitted in the public interest. He had regard to the controversial nature of the decision not to lower the drink-drive limit, and the high public interest in the information that led to that decision, as well as the views of the general public. However, much of this information was already available through the select committee process for the Land Transport Amendment Bill. Public submissions on that Bill had also been published on the parliamentary website. The Ombudsman concluded there was not a public interest in

release of the requested information sufficient to warrant remission of the revised charge.

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Case 319893 (2012)—Information related to cycling fatalities

A requester asked the Police for a range of documentation relating to cycling fatalities since 2007, as well as answers to specific questions. Police said the request would take a considerable amount of time, which would be charged for in accordance with the *Charging Guidelines*. The requester complained to the Ombudsman.

The Ombudsman asked the Police whether there was any information relevant to the request that could be provided with less effort than the work needed to answer the request in full. In particular, the first part of the request, which was for ‘*a list of all fatalities involving a bicycle since 2007, including police file numbers, dates and locations*’, seemed a possible option. Police were able to compile and supply a report addressing some aspects of the request using the Crash Analysis System (CAS) database free of charge.

The Ombudsman considered whether it was reasonable to charge for the remaining information at issue. He found that a reasonable estimate of the time required to compile that information was 94 hours, resulting in a charge calculated in accordance with the *Charging Guidelines* of \$7,068.

The Ombudsman then considered whether that charge should be remitted in the public interest. The requester contended that the information was needed to assist in the preparation of submissions for a Coroner’s inquiry into cycling fatalities, and that his overall aim was increased public health and safety. These aims clearly aligned with the public interest factors suggested in the *Charging Guidelines* as warranting remission.

However, the Ombudsman considered that the public interest in release needed to be sufficiently compelling to justify spending this much staff time on one request without charging for it:

The staff time involved (over 90 hours) is funded by the public purse, and to my mind it is reasonable to expect a tangible public benefit from the use of that level of resource.

The Ombudsman did not consider this case met that threshold. The readily retrievable information already released by the Police would have adequately assisted in the preparation of submissions to the Coroner’s inquiry. The Coroner also had the power to request information direct from the Police if it was necessary for the purpose of the inquiry. The Ombudsman was not persuaded the charge should be remitted in the public interest.

The Ombudsman also noted that the primary source of much of the requested information was traffic accident reports. These reports are available pursuant to a charging regime set by statute. [Section 211 of the Land Transport Act 1998](#) provides that

traffic accident reports are available on payment of the prescribed fee, and the [Land Transport \(Assessment Centre and Accident Report Fees\) Regulations 1998](#) provide that the prescribed fee is \$55. The OIA could not override this.

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Case 178468 (2009)—All information about Treaty claim over three year period

The Office of Treaty Settlements (OTS) charged \$708 to meet a request for all correspondence, memoranda, faxes, emails, file notes, and notes of telephone calls relating to the Te Roroa claim over a three year period. The requester complained to the Ombudsman. The Ombudsman noted that the information at issue was found in 50 files, and concluded the charge imposed reflected a significant under-estimation of the time that would be required to meet the request.

The Ombudsman accepted that the Te Roroa claim and its subsequent settlement raised matters of **public interest**. Disclosure of information relating to the settlement process would serve to increase the transparency of the process and promote accountability for the settlement that was reached. However, this did not mean that there was a public interest in making available, without charge, all correspondence, memoranda, faxes, emails, file notes and notes of telephone calls relating to the settlement over a three year period.

The request was so broadly framed it would likely capture many minor and trivial documents. Disclosure of this type of information would be unlikely to contribute significantly to public understanding of the settlement process.

The Ombudsman acknowledged the requester's contention that meeting the charge would cause him **hardship**. A requester's personal financial hardship is a matter that may be taken into account in assessing whether to impose a charge. However, lack of financial resources, by itself, does not provide sufficient reason to remit an otherwise reasonable charge. Some public interest considerations favouring the disclosure of the information should also be apparent. Although there were public interest considerations favouring the disclosure of information relating to the settlement process in this case, the breadth of the information potentially covered by the request went beyond the information needed to meet the public interest considerations involved.

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Case 179387 (2010)—Information about self-reported convictions of teachers

The Teachers' Council charged \$3,277.12 to supply a member of the news media with the following details of instances where teachers had self-reported convictions:

- the gender of the teacher;
- the date on which the Council received the report of conviction;

- the registration status of the teacher at the time the report was received;
- the current registration status of the teacher;
- the details of the conviction(s) and sentence;
- a copy of the information provided by the teacher; and
- a copy of the summary of facts and sentencing notes.

The requester complained to the Ombudsman. The Ombudsman accepted the request would take approximately 11 hours processing time. With the first hour free, this amounted to a charge of \$760. This was based on an estimated 20 minutes per file to locate, extract and collate the requested information from 29 relevant files. The Ombudsman then considered whether the \$760 charge ought to be remitted in the public interest.

The Ombudsman acknowledged the public interest in transparency and accountability of Teachers' Council processes. He also acknowledged that *'the media serves the function of informing the public on matters of public interest'*. However, *'this does not mean that all its sources must be available at no charge'*.

The Ombudsman accepted that the staff time required to process this request would have a significant impact on the conduct of the Teachers' Council's business, and that it would have to engage additional staff in order to complete the work involved. He was not persuaded that the public interest in release was such that remission of the charge was warranted.

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Case 172531 (2007)—Information about a DOC Recommended Area for Protection

The Royal Forest and Bird Protection Society asked Solid Energy for all substantive information between 1998 and 2005 regarding a Department of Conservation Recommended Area for Protection. Solid Energy advised a charge of \$9,930.31, and the Society complained to the Ombudsman.

Solid Energy sought to recover the actual cost of supplying the information, including costs charged by its consultants, on the basis that it was commercially valuable. The Ombudsman commented:

Information can be seen to be commercially valuable if it can be traded in some way, or if its release at less than production cost would confer a commercial advantage on a commercial competitor who would be saved the cost of producing, or otherwise acquiring, the information for itself. There has been no suggestion that either of those situations applies to the information in issue. Mere release of the information does not diminish its value to [Solid Energy] since it still has the information and can continue to derive whatever benefit it provided.

The Ombudsman reviewed the modest amount of material at issue (15 documents of substance and approximately 125 pages of other material). It included experts' reports, submissions regarding the boundaries of the proposed Recommended Area for Protection, and deeds of agreement between Solid Energy and the Department of Conservation relating to access to the relevant areas. He stated:

The legal documents may evidence rights that may, perhaps, be tradable, but release of that information does not affect such tradability, if any. There is a submission, dated 1998, which may have value as a precedent, but that value is not diminished by its release. The remaining information (other than the correspondence) contains the opinions of various experts on [Solid Energy's] proposed mining operations, and the land, and its fauna and flora, likely to be affected by them. As [Solid Energy] is the only entity permitted to carry on such operations at that location it is hard to see any realisable commercial value in that information.

The Ombudsman was not satisfied that any information of commercial value was to be released. Consequently there was no justification for charging on such a basis. He formed the opinion that \$2000 reflected a reasonable charge in respect of the staff time involved.

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Case W45424 (2001) - Charge imposed without forewarning after the provision of the information

A request was made for official information held by the Airways Corporation of New Zealand. The Corporation did not respond within the 20 working day time limit prescribed in section 15 of the OIA. Section 28(4) of the OIA deems such a delay to be a refusal of the request for the information. The requester complained.

Following notification of the complaint to the Corporation, the requested information was provided to the requester approximately two calendar months after the request had been made. At no time had the Corporation claimed that it was entitled to refuse any part of the request pursuant to any withholding grounds set out in the OIA.

Some weeks after providing the requested information the Corporation sought to impose a substantial charge for its provision. The Corporation relied on section 15(1A) of the OIA as the authority to lay the charge. At no stage had the Corporation advised either the requester or the Ombudsman investigating the complaint that any charge was in contemplation.

Section 15 sets out the period in which a holder of official information must reach a decision upon a request, and provide notice to the requester of that decision. Section 15(1)(a) provides that, if the request is to be granted, such decision shall include 'for what charge (if any)'.

As the Corporation had not advised the requester of its intended charge within the period permitted by section 15, there was no longer an authority under the OIA for a

charge to be levied. Given the presumption of availability of official information set out in section 5 of the OIA, there was no other lawful basis on which the charge might be made.

The view was formed that in the circumstances of this particular case, the Corporation was not entitled to levy any charge for the provision of the information.

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Case 176924 (2009)— Information about the Southern Saltmarsh Mosquito Eradication Programme

The then Ministry of Agriculture and Forestry charged a requester \$9,044 to supply information about the Southern Saltmarsh Mosquito Eradication Programme. The charge was upheld on complaint to the Ombudsman, and the requester paid the charge. After processing a third of the request, the Ministry advised the requester that the charge had been exhausted, and sought a further \$8,000 to complete the request. When the requester declined to pay the additional amount, the Ministry refused the request on the basis that it would require substantial collation or research to make the information available (section 18(f) of the OIA). The requester complained to the Ombudsman again.

The Ombudsman formed the opinion that it was not open to the Ministry to refuse the request or increase the charge. The request could not be refused under section 18(f) of the OIA because the information had already been collated. In relation to the increased charge, the Ombudsman stated:

*In my view, if an organisation sets a definite figure for fulfilling a request at the time of making its decision, then I do not consider it is open to the agency to charge more than the set figure. However if an organisation ‘fixes’ a charge by reference to an estimate, and the agency **clearly signals** that this figure may increase, then an Ombudsman on review is likely to consider that an increase that **is in line with the signalled estimate** is reasonable.*

In this case, the Ombudsman was not persuaded that simply referring to the charge as an ‘estimate’ was sufficient to forewarn the requester that the charge could increase, particularly by such a large amount. While the Ministry had made a genuine attempt to assess the likely charge, its scoping exercise prior to making a decision on the request was inadequate.

Even in situations where a requester has been forewarned of the possibility that the charge may increase, a significant factor for an Ombudsman reviewing the reasonableness of a charge will be whether the increased charge is substantially different from the estimate given. In this case, the Ministry sought to increase the charge by \$8,000, an increase of 82 per cent.

The original estimate given in this case was not an open one – it was intended to convey to the requester the maximum that he would be expected to pay. The Ombudsman did not consider it reasonable in this case for the charge to exceed the original estimate.

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Case 304081 (2012)—Information about a hospice

A District Health Board (DHB) decided to charge for supplying information about a hospice. The requester accepted the charge and paid the deposit. The requester made a second request for information. The DHB then withdrew the charge, refunded the deposit, and refused the first request on the grounds that it was vexatious (section 18(h) of the OIA), and it would require substantial collation or research to make the information available (section 18(f) of the OIA). The requester complained to the Ombudsman about the refusal of his first request.

The Ombudsman formed the provisional opinion that the DHB had made a decision to release the information to the requester, provided that he was prepared to pay the charge. Consequently, when the requester agreed to the charge, and paid the required deposit, he entered into an agreement with the DHB for provision of the information. In these circumstances, the Ombudsman could not see how it was reasonable for the DHB to subsequently withdraw its offer to release the information, and instead inform the requester that his request was refused. The requester was entitled to rely on the DHB's decision to release the information on payment of a charge. After considering the Ombudsman's provisional opinion, the DHB agreed to release the information for the original charge, and the Ombudsman discontinued his investigation on the basis that the complaint was resolved.

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Case 173607 (2007)—Information about Maori interests in the management of petroleum

The lawyers for an iwi sought documents relating to Maori interests under section 4 of the Crown Minerals Act 1991 in the Crown's management of petroleum. The Ministry of Economic Development advised that it would require considerable labour and materials to review the 18 files at issue and imposed a charge of \$380. The lawyers complained to the Ombudsman.

During the Ombudsman's investigation the Ministry agreed to make the files available to the lawyers by way of inspection, so they could identify the specific information they wished to obtain copies of. The opportunity for inspection was made subject to the following conditions:

- That no material was removed from any file.
- That —to the greatest extent possible—the lawyers focused on documents that were relevant to the request.
- That information obtained as a result of the inspection was not used for any purpose.

- That information obtained as a result of the inspection was not communicated to any other person, or published in any way.

Once the lawyers had identified the specific information they wished to obtain copies of, the Ministry would then make a separate decision as to whether that information was able to be disclosed without conditions. This removed the Ministry's need to charge for staff time spent researching the files. The Ministry retained the right to charge for photocopying, including staff time spent photocopying, depending on the volume of material the lawyers subsequently requested. The Ombudsman discontinued his investigation on the basis that this resolved the complaint.

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Case 177600 (2008)—Vehicle registration information available for purchase

The New Zealand Transport Agency charged a requester for providing information about vehicle registrations. The information was available for purchase on the internet for a monthly fee of \$56.25. The requester complained to the Ombudsman.

The Ombudsman declined to investigate a complaint about the charge because the request could have been refused under section 18(d) of the OIA. That section enables a request to be refused if the information is publicly available. The Ombudsman said:

If [an agency] properly refuses a request under [section 18(d)], the charging provisions in the [OIA] do not apply. A situation where [an agency] can clearly rely on section 18(d) is where it publishes the information and advertises this as available for purchase at a set price by any person.

The Ombudsman noted the following excerpt from the Law Commission's 1997 review of the OIA:³⁵

In some cases the ability to recover costs will arise through the commercial production and sale of the information (or the prospect of it) completely outside the ambit of the Act. In that event the request may be refused: s 18(d).

He also noted this excerpt from *Freedom of Information in New Zealand*:³⁶

To what extent is material 'publicly available' if a Department or organisation charges for it? Clearly, books, maps, and other documents do not lose their availability simply because they are sold. Clearly too, the price at which they are sold may exceed the charges normally payable for retrieval and copying under Part II of the Act but by how much? An excessive price could make the material 'unavailable' for the purpose of section 18(d). Departments should

³⁵ Note [17](#) at 56.

³⁶ Eagles, I, Taggart, M, and Liddell, G. *Freedom of Information in New Zealand*. Oxford; Oxford University Press, 1992 at 244.

not be able to resist claims for access to a single document by pointing to its publication in a tome costing hundreds of dollars...

The Ombudsman agreed with this approach. He commented that it might be unreasonable to rely on section 18(d) where a price is patently excessive, but in this case the price reflected the actual cost of producing the information.

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Case 376161 (2015)—Statistics that could be created for a fee

A requester asked Statistics NZ for the numbers of people living on an hourly rate of \$13.75, \$15 and \$16, and the total number of people earning less than \$18 per hour. Statistics NZ treated this as a customised data request and calculated a fee of \$172.50 for supply of the information, in accordance with its *Sales and Pricing Policy*. The requester complained to the Ombudsman under the OIA.

The first issue for the Chief Ombudsman was whether this was an OIA charging complaint, or one that had to be considered under the Ombudsmen Act. The Chief Ombudsman asked Statistics NZ whether it held the data at issue or would need to create it.

Statistics NZ explained that the data were sourced from the *New Zealand Income Survey* (NZIS). However, NZIS earning statistics are produced by average and median only, not by numbers of people earning at set levels. That information would need to be individually produced by an analyst with a high degree of skill and knowledge of the NZIS ‘*unit record*’, or raw data.

By describing in detail the steps that would be required to produce the information (including data programming and analysis), Statistics NZ was able to satisfy the Chief Ombudsman that this was a case of creation rather than collation of the information, and so the information was not ‘*held*’ and not available for request under the OIA.

As the OIA did not apply, the Ombudsman considered whether the charge was reasonable in terms of the Ombudsmen Act. The Chief Ombudsman determined that the charge was calculated in accordance with Statistics NZ’s *Sales and Pricing Policy*, and that it was not unreasonable in the circumstances of this case to recover the full cost of producing the data.

The Chief Ombudsman also asked Statistics NZ whether there was any readily retrievable information that could be supplied to the requester free of charge. Statistics NZ was able to point the requester to published statistics about personal income distribution broken down by weekly personal income. It was also willing to provide information compiled in response to an earlier customised data request for the number of people who were earning the minimum adult wage.

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Appendix 3. Template charging letter

[Name and address of requester]

Dear [name]

Official information request for [brief detail of the subject matter of the request]

I refer to your official information request dated [date] for [quote or set out detail of request].

[Use if granting the request in full and charging]

We have decided to grant your request. However, given the amount of resource required to process your request, we have decided to charge for making the requested information available.

We estimate that the maximum charge will be [amount]. [A discount of [1–100] percent has been applied in recognition of the public interest and/or potential hardship]. Any unused component of the maximum charge will be refunded to you. For details of how this charge has been calculated refer to the enclosed estimate of costs [see [sample estimate of costs](#)].

Before we proceed further with your request, please confirm your agreement to the charge [and pay the full amount / [amount] as a deposit, with the balance to be paid on release of the information]. [Specify how payment should be made]. We will send you the information within [time period] of your payment.

[Use if granting the request in part and charging]

We have decided to grant your request in part, namely information which relates to [describe information to be released in sufficient detail to enable requester to decide whether to pay the charge]. We have also decided to refuse your request for information which relates to [describe information withheld] under section [detail relevant section(s)] of the [OIA/LGOIMA], as release would [describe relevant harm].

Given the amount of resource required to process your request, we have decided to charge for making part of the requested information available. We estimate that the maximum charge will be [amount]. [A discount of [1–100] percent has been applied in recognition of the public interest and/or potential hardship]. Any unused component of this charge will be refunded to you. For details of how this charge has been calculated refer to the enclosed estimate of costs [see [sample estimate of costs](#)].

Before we proceed further with your request, please confirm your agreement to the charge [and pay the full amount / [amount] as a deposit, with the balance to be paid on release of the information]. [Specify how payment should be made]. We will send you the information within [time period] of your payment.

[Use in all cases]

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

If you wish to discuss this decision with us, please feel free to contact [details of contact person]. [Contact person] will be able to assist you should you wish to change or refine your request in order to reduce or remove the need to charge.

Yours sincerely

[Name]

Appendix 4. Sample estimate of costs

Locations searched	•
Search terms used	•
Date range	DD/MM/YY–DD/MM/YY
Estimated no. of documents at issue/to be searched through	
Chargeable activities required	<input type="checkbox"/> Search and retrieval <input type="checkbox"/> Collation <input type="checkbox"/> Research (reading and reviewing to identify the information) <input type="checkbox"/> Editing (excising or redacting information to be withheld) <input type="checkbox"/> Scanning / copying <input type="checkbox"/> Reasonably required peer review to ensure that these tasks have been carried out correctly
Estimated minutes per document to complete chargeable activities	
Estimated total time to complete chargeable activities	
Estimated no. of pages to be photocopied	

	Quantity	Price	Totals
Labour	[A] hours	\$38/half hour, with the first hour free	\$(A - 1 x \$76)
Photocopying (if applicable)	[B] pages	\$0.20/page, with the first 20 pages free	\$(B - 20 x \$0.20)
Other (specify)		\$	\$
Discount applied due to public interest / hardship (if applicable)		[1–100] %	- [amount of discount]
		Total cost	