

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Leader and Cabinet
AUTHOR/S: Chief Executive / Senior Lawyer

12 February 2009

PUBLICATION SCHEME – CHARGING POLICY

Purpose

1. To approve the attached Corporate Charging Policy (**Appendix**) for inclusion in the Council's Publication Scheme.
2. This is a key decision because it raises new issues of policy and was first published in the February 2009 Forward Plan.

Background

3. The Freedom of Information Act 2000 (FOIA) provides rights of public access to information held by public authorities. Public Authorities are required to make it clear whether a charge is made for material, which they routinely make available through their Publication Schemes. The Act does not specify how these charges should be calculated. However, any charge should be justified, clear and transparent. If a public authority does not make it clear in the Publication Scheme that charges will be made for information, then they will be unable to charge for it. The Information Commissioner's Office ("ICO") has published a Guidance Note (*see Background Papers*)
Specific guidance has been published with regard to planning information. In 2004 the Office of the Deputy Prime Minister (ODPM) published "*Making the Planning System Accessible to Everyone- A Good Practice Guidance on Access to and charging for Planning Information*" (*see Background Papers*)
4. The ICO has stated that, where a charge applies, the public should be left in no doubt as to what the charge is for and the amount. A schedule of charges included in an authority's Publication Scheme that is regularly updated will help to make this transparent. A schedule should provide details of all the different types of charge that may be made, such as printing, copying or postage charges and also any statutory charges that apply to any specific types of information.
5. Local Government legislation gives local authorities power to set reasonable charges but, in 2004, an ODPM survey showed large differences in charging regimes around the country. For example, one local authority's charge for supplying a printed copy of a Planning Decision Notice was 10 pence per sheet whereas another authority charged £35 per Notice. Further, very few authorities could point to any policy or reasoning for their charging rates. Charges did not reflect the actual cost of printing and postage but seemed to include an element of profit.
6. The FOIA does not give public authorities the specific power to charge for information. Authorities derive this power from local government legislation generally. This is because it was never the intention of the FOIA to provide public authorities with a way to profit from routinely releasing information. The ICO strongly

recommends that the level of charges should be compatible with the principle of promoting public access to the information held by public authorities and he considers high levels of charging for routine information to be contrary to promoting public access to official information. He expects routine information to be made available at minimal or no cost. Examples of charges that would not be considered to be reasonable are staff time and where the only justification is that they have traditionally been made.

Considerations

Examples of current practice at the Council

7. (a) *Planning Services* refer to a schedule entitled “Miscellaneous (Sundry) Sales Charges – Prices with effect from January 2002”; although the origin of this document is unknown it appears to have been around for a very long time as it refers to Local Plan documents from the 1980’s and 1990’s. By way of example, the cost of supplying a copy of a standard s.106 planning agreement is fixed at £12. Similarly, a copy of a planning decision notice is charged at £12 up to 30 sides and 5p for each additional sheet. A copy of the s.106 for Arbury Park is currently £35.
- (b) *Building Control* relies on a schedule specific to the service. The charges include the following: “For all copy documentation on individual applications – per document - £10”.
- (c) *Health & Environmental Services* refer to a Report on Fees & Charges that is reviewed annually. For supplying a summary of Public Register of Authorised Processes under EPA 1990 the cost for 2008/9 is £45 plus a copying charge of 20p per A4 sheet. For the supply of Public register information by hard copy, fax or email the charge for 2008/9 is “£35 for 100 entries then £5 per 100 entries thereafter 75% of above 50% of above”.

Relevant Case Law

8. In 2005 the Kings Lynn & West Norfolk Borough Council’s copying charge of £6 for a planning decision notice and 50p for each extra sheet copied from the planning file was challenged. The case came before Information Tribunal on appeal in 2006. The relevant legislation was the Environmental Information Regulations (similar to FOIA). The Tribunal ordered the Council as follows:
 - (a) *To reassess its charges;*
 - (b) *In making that reassessment, to adopt as a guide price the sum of 10 p per A4 sheet, as identified in the “Good practice guidance on access to and charging for planning information” published by the ODPM and as recommended by the DCA*
 - (c) *The Council should be free to exceed that guide price figure only if it can demonstrate that there is a good reason for it to do so. Provided there has been proper study, scrutiny, decision and authorisation for such a charge, and the process for arriving at the higher charge is published and available for scrutiny. In any event, any costs associated with the maintenance of the information or its identification or extraction from storage, the real or perceived significance of the content or the effect the charging structure may have on the Council’s revenue or staff workload should be disregarded.*

Options

9. The Council may maintain the *status quo* with regard to its charging policy; however, as stated below, it is considered that the current practice is unsustainable in law and open to legal challenge.

Implications

10. Financial	In 2007/8 the revenue received for providing copies of planning information was £7,705. Figures for the Council as a whole have not been obtained
Legal	It is considered that the Council's current charging practices are unsustainable in law and are open to legal challenge.
Staffing	None specific
Risk Management	Excluding where statutory charges apply, the variety of charges made by the Council does not appear to be justifiable and some levels of charges could be (and indeed have been) challenged. Standardising the charges on a reasonable and justifiable basis and publishing them should avoid the risks of complaint or challenge.
Equal Opportunities	None specific

Consultation

11. Internal consultation has taken place with corporate managers and the Finance Portfolio Holder.

Effect on Corporate Objectives and Service Priorities

12.	Work in partnership to manage growth to benefit everyone in South Cambridgeshire now and in the future
	Not applicable
	Deliver high quality services that represent best value and are accessible to all our community
	The proactive publishing of routine information is a necessary part of the Council's business activities.
	Enhance quality of life and build a sustainable South Cambridgeshire where everyone is proud to live and work
	As above.

Summary

13. (a) The current charging practices are based on out of date thinking that the setting of copying charges should take into account the time it takes for an officer to copy the information, the importance of the document and should be seen as a way of boosting the Council's income.
- (b) FOIA requires the Council to publish a Publication Scheme informing the public what information is routinely made available, how the public may access it and whether there is a charge.

(c) A Corporate Charging Policy is needed to replace the current practices and make the Council compliant with FOIA.

(d) The proposed new Charging Policy will not affect any statutory charging regimes that may apply to specific types of information. Where a non-standard charge applies, the Council will explain in its Publication Scheme what the charge is and why it is charged.

Recommendation

14. It is recommended that the **attached** Charging Policy be adopted and included in the Council's Publication Scheme.

Background Papers: the following background papers were used in the preparation of this report:

Charging for information in a publication scheme," published by the Information Commissioner's Office – Aug 2008

"Good Practice Guidance on Access to and Charging for Planning Information" published by the ODPM and recommended by the DCA

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