

Minister for Public Expenditure and Reform, Brendan Howlin TD
Department of Public Expenditure and Reform
Government Buildings, Upper Merrion St.,
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The Honourable Brendan Howlin,

We are writing from the specialist international freedom of information organisations Access Info Europe and the Centre for Law and Democracy. We welcome your decision today to withdraw your proposed amendment to the Freedom of Information Bill 2013, which would have imposed multiple up-front fees for certain types of requests. This would have been a very unfortunate rule which would not only have presented further barriers to requesters but also created unnecessary and potentially costly uncertainty and the potential for abuse inasmuch as prescribed bodies would have had to decide when to impose multiple charges.

At the same time, we urge you to take advantage of the important opportunity presented by the introduction of new rules on access to information to reconsider the fee regime in its entirety. We take as our starting point the fact that access to information held by public authorities is a human right, based on the right to freedom of expression. This has been explicitly recognised by the European Court of Human Rights, as well as other international bodies, including the UN Human Rights Committee. From a human rights perspective, we note two problems with the existing fee regime, namely charging up-front fees and charging for search and retrieval of records.

Various arguments have been put forward to justify charging up-front fees simply for making requests, none of which can be justified by reference to either international standards or comparative law and practice. Charging up-front fees for information requests violates international standards. It is clearly unacceptable to charge people to exercise a fundamental right. This is reflected in the Council of Europe Convention on Access to Official Documents, which expressly prohibits up-front charges for requests (Article 7(1)). Indeed, the drafters of that Convention considered and specifically rejected a request from Ireland to allow for such charges.

Furthermore, charging up-front fees is out of step with other countries. Ireland is the only country in Europe to have mandatory up front charges for all FOI requests. The only other country which permits such charges is Malta, but these are not routinely applied. Even counting Malta, only 5% of 39 European countries and 16 of 95 countries worldwide (17%) charge fees, something campaigners in many of these countries are

working to abolish. The problem is exacerbated by the high level of the Irish fee which, at €15, is higher than the fee charged in any other country that we are aware of.

International standards also govern the fees that may be charged for satisfying a request. The UN Human Rights Committee has indicated that in no circumstances may fees be charged which would "constitute an unreasonable impediment to access to information" (2011 General Comment on Article 19, para. 19). The Council of Europe Convention only permits a fee to be charged "for a copy of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document" (Article 7(2)). In other words, only photocopying and postage charges are permitted.

Arguments justifying the charging of costs other than photocopying and postage charges are flawed on three grounds. First, information held by public authorities belongs to the public, having been created with taxpayers' money. Second, the cost of responding to requests is heavily correlated with the efficiency of public bodies' record management systems. It is not appropriate to pass this on to members of the public exercising their right to know, which effectively rewards poor record management practices. Third, charging high fees exerts a significant chilling effect on making requests, and there are strong public interest arguments against this, due to the significant benefits which flow from transparency. These include enabling democratic public oversight over government activity, identifying inefficiency, waste and corruption, contributing to better decision-making, and fostering greater public participation in and ownership of development activities, all of which result in savings to government, even if this is hard to quantify. Opening up government information has also been shown to make an important contribution to economic growth in knowledge-based economies, based on entrepreneurial reuse of public data. There is also the importance in a democracy of the public knowing what its government is doing, something which it is impossible to put a price tag on.

We had the pleasure of meeting you recently at the Open Government Partnership meeting in London. We know that your government has made a commitment to open government and that it understands the importance of transparency and its multiple democratic, social, and economic benefits. We therefore urge you to amend the current Bill by bringing its fee rules into line with international standards. It would be a great shame if Ireland were to undermine this commitment by placing unreasonable obstacles in the way of the exercise of a fundamental democratic right.

Yours sincerely,



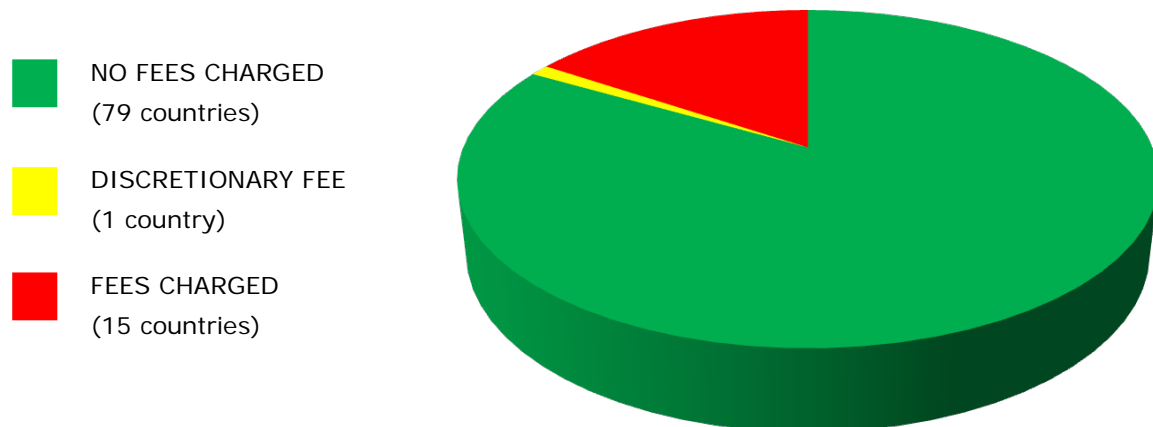
Helen Darbshire
Executive Director
Access Info Europe



Toby Mendel
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Annex 1

Pie chart showing whether citizens are charged fees for making access to information/FOI requests



Annex 2

List of countries that do not charge fees for making access to information/FOI requests

Albania, Angola, Antigua, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Colombia, Cook Islands, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, Indonesia, Italy, Jamaica, Jordan, Kosovo, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Macedonia, Mexico, Moldova, Mongolia, Montenegro, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Peru, Poland, Portugal, Romania, Russia, Rwanda, Serbia, Slovakia, Slovenia, South Korea, Sweden, Switzerland, Thailand, Trinidad, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Yemen.

Countries where there is a discretionary option for public bodies to elect to charge fees but where they do not always do so in practice

Malta

List of countries that charge fees for making access to information/FOI requests

Canada, China, India, Ireland, Israel, Japan, Nepal, Pakistan, Saint Vincent and the Grenadines, South Africa, Taiwan, Tajikistan, Uganda, Uzbekistan, Zimbabwe