

Ministry of Health reconsiders decision to charge for collation of information

Legislation	Ombudsmen Act 1975, Official Information Act 1982
Agency	Ministry of Health
Ombudsman	John Belgrave
Case number(s)	W50815
Date	2004

Requester sought draft and final copies of public health contracts for four financial years between Ministry of Health and 42 providers—Ministry agreed to release but subject to charge of \$24,000—Ombudsman sought basis for charge—request for vast amount of information requiring substantial collation—charge applied in accordance with Ministry of Justice Charging Guidelines—however, Ministry had previously released part of requested information to an MP free of charge—Ombudsman did not consider it reasonable now to charge member of public for same information—Ministry agreed to review decision and release that particular information again free of charge and assist requester to refine request for outstanding information

A requester made a series of requests to the Ministry of Health in 2003 for certain information concerning the Government's tobacco control programme. One of these requests was for copies of the contracts between the Ministry and 42 organisations for the delivery of the public health component of that programme including any draft contracts for the 2000/01, 2001/02, 2002/03 or 2003/04 financial years.

In response, the Ministry advised that it would be necessary to charge the requester for the supply of this information and that, given the likely time and cost required to collate the relevant information, the charge would be approximately \$24,000. The requester asked the Ombudsman to investigate this decision.

The Ombudsman asked the Ministry for a report explaining the basis for the decision to charge and a breakdown of how the estimate was reached. The Ombudsman noted that the Ministry of Justice 'Charging Guidelines for Official Information Act 1982 Requests' (the Guidelines), dated 18 March 2002, provided a basis for assessing whether a proposed charge was reasonable. They give some guidance on the factors which may be relevant when assessing

whether, and to what extent, it is reasonable to charge for the supply of official information. In particular, the Ombudsman referred to paragraph 2.3 of the Guidelines which identifies a number of factors that may be relevant. He noted that the Guidelines also specify that any charge for the supply of information should not include any allowance for time spent in deciding whether or not access should be allowed to the information and in what form. The Ombudsman asked the Ministry to clarify whether it proposed to include the time spent in writing to providers and considering the response from providers in the proposed charge, and if these steps formed part of the process of deciding whether access to the information should be granted. The Ombudsman also asked the Ministry to indicate in its report whether any consideration had been given to lessen the charge in this case for public interest reasons, or whether reduction of the charge would be likely to contribute significantly to public understanding of, or effective participation in, the operations or activities of the Ministry.

In response, the Ministry explained to the Ombudsman that the Public Health contracts are for periods of either two or three years and each provider prepares either quarterly or six-monthly routine reports. Therefore, each of the 42 providers would have had contracts renewed at least once in the timeframe of this particular request. It also said that many intervening communications between officials and providers are typical and would be likely to fall within the scope of the request as it was presently worded. The Ministry advised that it would take 42 days (at 7.5 hours per day) to retrieve, analyse, collate, photocopy and process the information requested. The estimate was therefore calculated at 315 hours multiplied by \$76 per hour with the first hour free of charge as set out in the Guidelines. The Ministry confirmed that it did not include the time spent in contacting providers and considering their responses in the cost estimate. Further, it did not propose reducing the charge for public interest reasons. The Ministry advised that the requester was the only member of the general public to make such a request that year and it therefore assumed that the level of public interest in understanding or participating effectively in the matter was not high. Accordingly, the Ministry considered its estimate of \$23,864 was reasonable.

However, it was the Ombudsman's understanding that the Ministry had previously released some of the information at issue to an opposition MP free of charge. It has long been the view of Ombudsmen that there should be consistency in the application of the Guidelines as between requesters. For example, it would not be reasonable to charge only the original requester where others receive information free of charge. The Ombudsman therefore asked the Ministry to confirm whether his understanding was correct and if so, he requested details of that previous release and the basis for any decision to charge the complainant in such circumstances.

The Ministry confirmed that it had previously released copies of 39 contracts for three of the financial years covered by the request to an opposition MP free of charge. However, it noted that the complainant's request was substantially more broad as it included another financial year and drafts of the contracts. As a result, even though some of the information had been released to the opposition MP, a search through the same files would be required to retrieve the additional material falling within the scope of the complainant's request.

The Ministry agreed that, for the sake of consistency, it would release to the complainant free of charge the same information it had previously released to the opposition MP. Copies of the contracts for the outstanding financial year would still be charged for.

The Ombudsman asked the complainant to consider whether release of this information provided him with a basis to refine or narrow his request so that the task of identifying and collating the remaining information covered by his original request was more administratively manageable. The Ministry agreed to assist the complainant to refine his request.

The complainant did not respond. In the absence of further comments, the Ombudsman assumed that the information released had resolved the complaint and discontinued his enquiries on that basis.

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