

Charge for the supply of information about Southern Saltmarsh Mosquito Eradication Programme

Legislation	Official Information Act 1982, s 15(1A)
Agency	Ministry of Agriculture and Forestry
Ombudsman	David McGee
Case number(s)	176924
Date	October 2009

Unreasonable to increase charge that had already been fixed and agreed by the requester.

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.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman’s view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.