

## Charging for personal information under the Privacy Act

### A guide for agencies

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#### Charges should be the exception – not the rule

In most circumstances, an agency shouldn't be charging a fee to people for accessing or correcting their personal information. The spirit of the Privacy Act is to allow people to access and correct their own information. This means ensuring as few barriers as possible – including cost.

However, there are some circumstances where it may be okay for an agency to charge people to access or correct their information. This guide helps you understand when and what you can charge.

#### Who can charge? – Section 66

**Private sector [agencies](#)** may impose a charge for:

- Making information available, in whole or in part, with respect to a request.
- Aiding a person who wants to or is making a request for information, or a request for correction – but only if an agency is making some information available.
- Attaching a statement of correction to personal information.

**Public sector [agencies](#)** cannot charge a person for accessing their personal information, or for attaching a statement of correction to that information,<sup>1</sup> unless [the Privacy Commissioner has authorised that agency to impose a charge](#).

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<sup>1</sup> The Privacy Commissioner can authorise a public sector agency to charge, but to do so the Commissioner must be satisfied that the public sector agency will be commercially disadvantaged in comparison with any private sector competitor. Generally, a public sector agency is unlikely to have a commercial position or private sector competitor and is therefore unlikely to be able to apply for such authorisation.



## What can I charge for?

An agency can only charge to provide someone with their personal information, and not for

assessing whether the agency will provide that information. For example, if you think you can withhold some information, you cannot charge for the time it takes to determine what withholding grounds apply to the relevant information, even though this may be time-consuming.

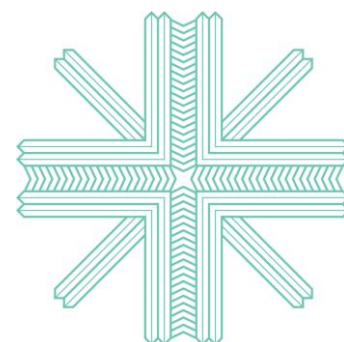
The table below provides some examples of what you can charge for. This list is not determinative – if you have any questions about what you can charge for, [you can get in touch with us](#), and we will do our best to help you.

Can charge	Cannot charge
<ul style="list-style-type: none"> <li>• Cost of photocopying or scanning the documents.</li> <li>• Cost of a USB stick or postage.</li> <li>• Time spent locating the relevant information.</li> <li>• Time spent physically redacting the information.</li> </ul>	<ul style="list-style-type: none"> <li>• Time spent reviewing the information to determine whether any withholding grounds apply.</li> <li>• If an agency refuses a request.</li> <li>• Time spent transferring a request to another agency.</li> </ul>

## Charges must be reasonable

Any charge imposed must be reasonable. This is because the right to access your personal information is one of the fundamental rights set out in the Privacy Act.

What is reasonable will depend on the specific factors of each request and you will need to consider each charge as it comes up. A reasonable charge can often be lower than the actual cost in responding to a request.



The Privacy Act says you may want to consider:

- The cost of labour and materials involved in making the information available
- Any costs involved in making the information available urgently.

Other factors you may want to consider include:

- Is the information where it should be? - You can't charge more because you have poor retention or information management policies.
- Are you making the information available in the format requested? – If the person has requested the information by email, you should not be charging for the cost of photocopying and posting the documents.

The Office of the Privacy Commissioner and the Human Rights Review Tribunal have previously relied on the amounts indicated in the [Ministry of Justice charging guidelines for handling Official Information Act](#) requests as a reference for requests under the Privacy Act.

Those guidelines, which also provide that a charge should represent a reasonable fee for access, state that:

- The first hour of staff time is free.
- The first 20 pages of photocopying are free.
- After the first hour, you can charge \$38 per half hour of staff time.
- After the first 20 pages you can charge 20 cents per page.

We would consider this a useful starting point when thinking about a request under the Privacy Act. However, it is important to remember you need to assess each situation based on its facts. In many cases the amount you can charge will be less than what these guidelines suggest. It is rare that a higher charge will be justifiable.

## Charge means release

If you're going to impose a charge, you generally need to have already made the decision to either release some or all the information or have decided to attach the statement of correction.



Sections 44 and 45 of the Act set out how you must respond to a request for information. [If you decide to release information and impose a charge, you must tell the requester:](#)

- Whether you are imposing a charge.
- How much that charge is.
- Whether they must pay you in advance (whether partially or in full).
- That they have a right to make a complaint to our Office about the charge.

You can also charge for aiding someone when they want to make an access request or attach a statement of correction. Often this will be done at the same time you decide to release the information, but if it comes before you still need to tell the requester about this as above.

### What if the requester disagrees with a decision to charge? Or the amount?

If a person is unhappy with your decision to charge them for their information or for correction, or if they are unhappy with the amount proposed, they can make a complaint to our Office.

If the Privacy Commissioner considers the charge is unreasonable, they can [make a binding determination on how much an agency can charge](#).

It may also be an interference with a person's privacy, if you decide to charge, or decide to charge an unreasonable amount, [without a proper basis for that decision](#).

### Other useful resources

**The Human Rights Review Tribunal** has considered charges in the following case:

- [Director of Human Rights Proceedings v Schubach \[2015\] NZHRR 4](#) – where a lawyer required a charge of \$800 before releasing personal information. The Tribunal found an interference with privacy and required the lawyer to release the information without



charge. It also awarded around \$11,000 in damages to the individual.

The Privacy Commissioner has also made several determinations with respect to charges. We have some case notes which consider charges here:

- [Case note 294559](#) – A law firm wanted to charge \$19,000 for information. The Commissioner found a reasonable charge was \$7.99 – the cost of a USB stick. [The Tribunal also awarded damages.](#)
- [Case Note 204595](#) – the Commissioner found a reasonable charge of \$150 for access to personal information held by an accountant (being about 500 pages of information). The fee amounted to one chargeable hour of time spent photocopying.
- [Case Note 7844](#) – Considering the cost of photocopying and associated labour, the Commissioner found a reasonable charge for information held by a private sector company to be \$122.65.

## Contact us

If you have any questions about charging someone for accessing and correcting personal information, please contact us using our [online enquiries form](#) or on 0800 803 909.



## Specialist agencies – health information and credit information

### Health Information

The Health Information Privacy Code<sup>2</sup> limits the circumstances where a health agency can charge a person for providing their health information.

**Public sector** health agencies (like a District Health Board) cannot impose a charge on a person requesting their health information.

**Private sector** health agencies (like a GP, private clinic, health insurer) can only impose a charge if:

- It has already made the same or substantially the same health information available to the individual, in response to a request, within the last 12 months.
- Providing a copy of an x-ray, a video recording, an MRI scan photograph, a PET scan photograph, or a CAT scan photograph.
  - The rationale behind health agencies being able to charge for x-ray, MRI scans, video recordings, PET or CAT scan photographs is to cover the cost of file. If the individual has requested the health agency email them these scans, then we would generally consider the charge unnecessary.

If the charge is likely to exceed \$30, you need to give the person an estimate of the charge before dealing with the request. You can request the payment be made before you provide the information to the person.

### Credit information

Credit reporters cannot charge for:

- Responding to a request under rule 6 within the usual timeframe - for confirmation a credit reporter holds any credit information about them or access to their credit information.

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<sup>2</sup> See cl 6 Health Information Privacy Code 2020



- Correcting any credit information
- Providing the individual with a copy of any corrected information under rule 7(8)(b).

Credit reporters can charge if a person requests their credit information is made available to them within three working days. Then the credit reporter must not charge more than \$10.00 (including GST).



# Who can charge for access to personal information?

## Public Sector Agency

Has the Commissioner authorised you to charge per section 67 of the Privacy Act?

No



Yes



## Private Sector Agency

### Credit Reporter

**Charging for** a request under rule 6 of the Code for information to be made available within three working days

You can charge no more than \$10

### Private Sector Health Agency

#### Charging for a copy of:

- An X-Ray, video recording, MRI, PET or CAT Scan photograph OR
- The same or substantially the same health information already made available after a request made within the last 12 months

#### Charging for:

- Providing assistance to a person wishing to or making a request ONLY if information is made available
- Making information available
- Attaching a statement of correction under principle or rule 7

#### Charging for:

- Processing a request for personal information
- Correcting information following a principle/rule 7 request

You **CANNOT** charge an individual for the costs involved in:

- Providing assistance
- Responding to a request to information (other than an X-Ray, video recording, MRI, PET or CAT Scan photograph),
- Correcting information following a principle or rule 7 request



You **can charge a reasonable amount** having regard to:

- An X-Ray, video recording, MRI, PET or CAT Scan photograph,
- The same or substantially the same health information already made available after a request made within the last 12 months,
- Attaching a statement of correction under principle or rule 7

