Purpose

The purpose of this document is to outline and provide guidance in relation to some of the considerations which may be relevant to a decision to impose processing charges for dealing with an access application under the *Government Information (Public Access) Act 2009* (GIPA Act).

Please read Division 5, Part 4 of the GIPA Act for an understanding of processing charges and advance deposits generally.

This document is designed to promote consistency of decision-making that reflects the objects of the GIPA Act, specifically to exercise the discretions conferred under the Act, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, access to government information in a fair and equitable manner.

Legislative basis

The GIPA Act provides that an agency may:

- impose a **processing charge** for dealing with an access application at a rate of $30 per hour (with the application fee accounting for the first hour of processing time).
- require the applicant to make an advance payment of a processing charge, known as an ***advance deposit***.

The period within which the application is required to be decided stops running from when the decision to require an advance deposit is made until payment of the advance deposit is received by the agency.

The processing time, which is the basis for a processing charge, is the total amount of time that is necessary to be spent by any officer of the agency in:

a) *dealing efficiently with the application (including consideration of the application, searching for records, consultation, decision-making and any other function exercised in connection with deciding the application), or*

b) *providing access in response to the application (based on the lowest reasonable estimate of the time*

that will need to be spent in providing that access).

If an access application is made for personal information about the applicant (the applicant being an individual), the agency cannot impose any processing charge for the first 20 hours of processing time for the application.

The Information Commissioner has published guidance on these provisions, including relevant factors for consideration, in its 'GIPA Guideline 2 - Discounting charges'. As of December 2018, Guideline 2 contained the following:

> *3.8   The processing charge covers the total amount of time that it takes an agency to deal efficiently with the application and to provide a response to the application. This includes time expended to consider the application, searching for records, consulting any third parties, and making a decision.*
>
> *3.9   The IPC's view is that agencies cannot charge for registering the application, conversations with the applicant to clarify the request or reduce the scope, drafting file notes, drafting letters (including notification of a valid application, or advance deposit letters; however, the determination letter may be charged for), postage, internal conversations, printing and other general administration incidental to or associated with processing the application.*

TfNSW accepts this guidance and avoids applying processing charges to the items listed in paragraph [3.9] above.

When will TfNSW consider imposing a processing charge?

Basic Premise	Processing charges will generally only be considered when dealing with the access application is likely to: • **involve 3 or more hours of search time; or** • **take 6 hours or more total processing time (including the time spent by the decision-maker)** but not so long as to constitute an unreasonable and substantial diversion of agency resources.

How does TfNSW calculate the processing charge?

Every decision to impose processing charges must be supported by sufficient information and be the product of transparent calculation. However, by necessity, the means by which we estimate the time to deal with application will depend largely on the particular circumstances of the application and the information involved.

Calculation of time for searching	Agencies' searches must be conducted using the most efficient means reasonably available to the agency. Accordingly, before applying processing charges for searches, the agency should be satisfied that the proposed searches are being conducted by the most efficient means available and are proportionate to the types of records and the database in which they are contained. The tasks generally included in this calculation are the time taken for the business area to locate, retrieve, and provide feedback on the information to the officer working on the matter. Factors which may affect an estimate of time for searches include: - How many people are required to search to locate the information? - Where are they searching? Multiple databases may require more time. - How many different searches will need to be run (having regard to the most efficient search terms).

| Calculation of time for reviewing/ otherwise considering documents | In instances where a large volume of documents have been located, the reasonable review time may be calculated by reference to the number of documents located.

The time to review the documents will depend largely on the type of record. For example, and email may only take a minute or less to read and review, whereas a specialist report may require much longer.

When numbers of pages have been identified, the reasonable amount of time to confirm the records are relevant may be calculated on the basis of time per page, for example, 1 minute per page (but will again depend on complexity of the information).

Documents for which public interest considerations against disclosure are identified, including Cabinet Information or Legal Professional Privilege, may take additional time to process, particularly where information is deleted from the record in order to address any public interest considerations against disclosure. |
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In all situations, the means by which the agency has calculated the estimated processing charges must be reasonable and clearly expressed in the decision.

The actual processing charge must be recalculated after the actual time spent on the application becomes known.

Tasks for which processing charges may apply

The basic processing charges presented below represent the lowest reasonable estimate of the time that is required to deal with the application and providing access to the information.

There are three charging components which should be applied in every case:

1. Consider the application – This includes consideration of the terms of the application, engaging with the business about the searches to be conducted and identification of any possible public interest considerations against disclosure. Time taken to consider the application is dependent on the complexity of the application, number of items requested, and whether the terms are clearly expressed. This will generally range from about 15 minutes to 2 hours.

2. Search for records – An application which requires the business area to spend three or more hours to search for records will be require payment of processing charges. The search time may be demonstrated in how the business has used targeted search terms, volume of records retrieved, types of records located, and complexity of the information in the records.

3. Make decision – this includes the time to draft a decision and finalise any information for release. Drafting a decision may generally take from 1 – 5 hours but may require more time in high volume and/or high complexity matters.

After the standard components are considered, the relevant modifiers are applied to determine the estimate of processing charges.

4. Consult – A minimum of 20 minutes is allocated =for each third party who requires consultation. This time includes preparation of information for consultation, and consideration of the response.

5. Reviewing pages – there can be a huge difference in the time taken to review large amounts of information. Some guidance is provided above in how to estimate that time. However irrespective of the time that it takes, large volumes of information will require (at an absolute minimum) time spent sorting, compiling, and preparing the information for release. The review of pages should be calculated within the following parameters:

- 0 – 49   0 additional time
- 50 – 199   Charge per page
- 200 -   Charge per page and handling

Advance Deposit

Generally, an advance deposit should be requested from the applicant as soon as a reasonable calculation of processing time can be determined. It is possible, but should be avoided, for processing charges to be requested with the final decision in the matter and payable before any information is released.

Given that the above represents the lowest estimate of time to deal with the application and provide access to the information, there may be circumstances, which warrant the application of additional time and require that additional processing charges are imposed. These should only be applied in accordance with the above principles.

Discounting or waiving of processing charges

Under section 127 of the GIPA Act, an agency is entitled to waive, reduce or refund any fee or charge payable or paid under the GIPA Act in any case that the agency thinks appropriate.

Any consideration about whether it is appropriate to waive, reduce or refund any processing charge or advance deposit must be in consultation with the Director, Information Access to ensure that the discount or waiver is consistent across the GIPA function in TfNSW.

The GIPA Act also provides that an applicant may apply for a 50% reduction in processing charges on the grounds of financial hardship (section 65) and/or that the information applied for is of special benefit to the public generally (section 66).

Under clause 10 of the GIPA Regulation, financial hardship includes if the applicant can provide evidence that he or she is the holder of a Pensioner Concession card issued by the Commonwealth that is in force, a full-time student or a non-profit organisation, including a person applying for or on behalf of a non-profit organisation. If the applicant provides reasons for requesting a financial hardship discount other than on the basis of the requirements set out in clause 9 of the GIPA Regulation, it is at the agency's discretion to determine the appropriateness of granting the request.
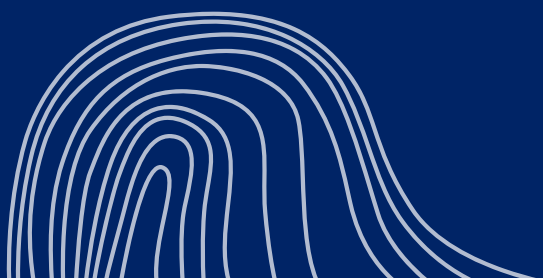
In relation to whether the information applied for is of 'special benefit to the public generally', the agency must decide whether it is satisfied that there is "a benefit that is different from what is ordinary or usual to the general public and thus not merely the private interests of the applicant alone": *Shoebridge v Forestry Corporation [2016] NSWCATAD 93* at [23].

When will a decision to discount processing charges be made?

The decision to impose additional processing charges and to require an advance deposit is at the discretion of the agency. A decision to either impose a charge, or to apply a discount is a reviewable decision under section 80 of the GIPA Act.

In some cases, it may be appropriate to decide to discount the processing charges at the time that the advance deposit is requested. For example: where charges are discounted on the basis of financial hardship, assuming the applicant has supplied the required evidence in support of the request.

In the case of whether the information is of special benefit, however, the agency may decide to wait to consider whether it is satisfied of the special benefit until it makes a decision to provide access or refuse access to the information applied for: *National Tertiary Education Union v Southern Cross University [2015] NSWCATAD 151* at [36]. It is at that time that the agency will have an opportunity to consider the content of the information applied for, to determine whether it is of special benefit. In all situations, the notice to an applicant requesting an advance deposit should clearly indicate when the agency proposes to make its decision as to any discount.