

East Lothian Council charged member of public to answer dog poo question

East Lothian Council has come under fire for charging a member of the public £3.62 to answer a question about dog poo fines.

The local authority demanded the payment to cover 10 minutes of work by a member of staff using legislation which allows them to recoup costs.

But Scotland's Information Commissioner David Hamilton has criticised the council saying he saw 'no merit' in demanding the fee before releasing the information.

And after the applicant appealed to him to review the decision he said the case had cost the council 'significantly more' in staff time than if it had just waived the fee in the first place.

East Lothian Council says it is currently revising its policy over charging for the release of Environmental Information requests (EIRs) and a general waiver of fees is understood to be in place while it is carried out.

The move comes just a few months after the Local Democracy Reporting Service revealed the council had nearly a dozen outstanding appeals lodged against it with the Information Commissioner relating to EIR charges.

East Lothian Council does not charge for providing answers to

Freedom of Information requests but if it deems them to fall under the EIRs it is able to charge.

The council had told the Commissioner it's policy was to "recover reasonable costs to produce information requested" under EIRs. In the dog poo case, where they were asked to provide the number of people fined, charged or arrested in connection with leaving it in a public place since 1998 and the costs of the dog warden service, it said the information would have taken ten minutes to find.

Ruling against the council, the Commissioner said: "It is clear that imposing a fee and dealing with the applicant's subsequent appeal to his office has cost the authority far more than the original sum of £3.62 that it wanted to recoup."

He added: "The commissioner cannot accept the authority's approach to charging in this case, and he cannot see any merit in the authority's decision to charge the applicant a fee for information that it could provide in only ten minutes."

The decision issued in January came just two months after the Commissioner found in favour of another appeal against the council, this time for charging £126.30 to answer three questions about the progress of a sports pitch planned in Macmerry.

On this occasion the council justified its billing saying among costs considered were on the basis it would take three hours work by a higher grade member of staff and included steps such as taking 10 minutes to read an email and a further 15 minutes to draft a response.

It again stated it was policy to recoup all staff costs in advance of carrying out the work.

The commissioner said that charges for EIR requests were not supposed to deter people from accessing the information or make it available only to those who can afford to pay. He also

said guidance on fees said asking for the money in advance should not be a regular request.

And he said the “blanket approach” the council was clearly pursuing regarding recovering staff costs “on no stretch of the imagination could be said to compatible with the spirit of any the relevant legislation.”

Following the two rulings which both called on the council to issue a revised review of their original decisions, a spokesperson for East Lothian Council said it was reviewing its current policy.

They said: “ Until such time as a refreshed policy is adopted, we will continue to assess environmental information requests on a case-by-case basis, with a general approach of waiving fees. We reserve the right to apply reasonable charges in specific cases where justified.”

By Marie Sharp Local Democracy Reporter