

Assessor for Scottish Borders

Freedom of Information Policy

This document is available in large print, and by email
Please contact the Assessor for Scottish Borders on:

Phone: 01835 825100

Fax: 01835 825101

e-mail: assessor@scotborders.gov.uk

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SECTION 1 – PURPOSE

- 1.1 The Freedom of Information (Scotland) Act, 2002 came into force fully on 1 January 2005. It gives any person the right of access to “recorded” information held by public authorities in Scotland. Once an individual makes a request for information, the public authority has 20 working days to respond, subject to certain limitations and exemptions.
- 1.2 This policy sets out the arrangements Scottish Borders Assessor makes to ensure compliance with the Act. The Policy is arrived at having regard to the section 60 guidance notes issued by Ministers.
- 1.3 For further information on Freedom of Information in Scotland, please visit the website of the [Office of the Scottish Information Commissioner](#), whose duties include promoting good practice and enforcing compliance with the Act.

SECTION 2 – RESPONSIBILITIES

- 2.1 **All staff** must be aware of the Freedom of Information (Scotland) Act and the duties it places on Scottish Borders Assessor as a public authority.
- 2.2 **Frontline staff** will be the likely initial recipients of requests for information. However it is not envisaged that such staff will deal with complex Fol requests. As a result, frontline staff should primarily familiarise themselves with sections 3 – 7 and 14, and [Appendix 1](#) of this policy statement.
- 2.3 Ross Welsh has been nominated as Fol Responsible Officer with Christel Kerr designated Back-up Responsible Officer. [Section 4.8](#) outlines the instances in which Fol requests must be transferred to these officers. Contact details are to be found in [section 14.1](#), and a list of key responsibilities for Fol representatives is included under [Appendix 2](#).
- 2.4 **Legal Advice is available from** – SBC’s Legal and Democratic Services. The contact details for the officers with responsibility for Fol can be found in [section 14.2](#).

SECTION 3 – MODEL PUBLICATION SCHEME

- 3.1 The Act requires that the Assessor must produce a publication scheme. This is a document describing the information that the authority publishes, in what format it is published, and details of any charges for providing the information. Scottish Borders Assessor has adopted the Scottish Information Commissioner’s Model Publication Scheme 2017.
- 3.2 The person responsible for the day-to-day maintenance of the Assessor’s Guide to Information under the Model Publication Scheme is Ross Welsh. The guide will be updated regularly to take account of changes to the information included.

- 3.3 Copies of the Model Publication Scheme and the Guide to Information are available from the Assessor's office and on [our website](#).

SECTION 4 – HANDLING REQUESTS ([see Appendix 1](#))

- 4.1 A Freedom of Information request must meet the following criteria:

- the information requested is **not** already included in the Assessor's Guide to Information
- it is in a permanent form capable of being used for subsequent reference, for example, email, letter, audio recording or voice mail message
- it is accompanied by the applicant's name and a correspondence address
- it contains a description of the information being requested

However, the applicant **does not** need to specifically refer to the Freedom of Information Act.

- 4.2 If a request for information can be routinely dealt with by an employee in the course of their everyday duties, it should just be handled as normal. For instance, if a telephone call is received asking what the office opening hours are, this can be answered immediately without asking the caller to put their request in writing. Although Council Tax Band and Net Annual/Rateable Value information is included in the Guide to Information, a telephone request for bands and/or values may be answered – a request for more than a reasonable number of subjects can be referred to the [Scottish Assessors' Association Portal](#) or asked for in writing.
- 4.3 The public authority has **20 working days** from date of receipt of the request to reply to the applicant. As a result, it is important that employees' voice messages, emails or in-trays are checked by colleagues if they are not at work for a substantial length of time. The Out of Office Assistant facility on Microsoft Outlook should be used for email.
- 4.4 The Act places a duty on employees to provide advice and assistance to applicants. It should also be noted that the applicant's reasons for requesting the information are not relevant.
- 4.5 Employees must respond flexibly to requests for information. If a potential applicant is clearly unaware of their rights under the Act, employees have a duty to outline the key points of the Act, and inform applicants of the procedures for requesting information.
- 4.6 The applicant can request a preference as to the form in which the information is provided, e.g. on tape, in large print ([see section 5](#) for further details). Otherwise, the information can be provided by:
- photocopying the relevant information (subject to exemptions etc.)
 - producing a new document summarising the information that was requested
 - allowing access to the original documents

- 4.7 If it is not possible to answer the applicant's request because they have provided insufficient information, the employee must contact the applicant to inform them of this and, if necessary, to help the applicant express more clearly what information they actually want. The public authority does not have to provide the information originally requested until the applicant clarifies his/her request.
- 4.8 Front line staff **must** transfer requests to the Responsible Officer if there is a possibility that:
- the answering of the request is outwith the course of their everyday duties
 - the information requested is subject to an exemption
 - the information requested is protected under the Data Protection Act
 - the request is "vexatious" or "repeated" ([see 9.4](#))
 - the answering of the request is likely to incur a charge
 - the answering of the request is likely to take longer than 20 working days

SECTION 5 – DIFFERENT FORMATS

- 5.1 Together with the Equality Act 2010, the Act places a duty on public authorities to be sensitive to the needs of disabled applicants and, where reasonable, to provide any information requested in their preferred format. This could include large print, audio recording or Braille.
- 5.2 Applicants may also request that information be provided in a minority language. Again we are duty-bound, under the Freedom of Information Act and the Equality Act 2010, to consider such requests.
- 5.3 In such cases, requests should be promptly referred to Ross Welsh who will, in turn, liaise with the Scottish Borders Council's translation service providers.
- 5.4 Any additional costs for providing the information in an alternative format cannot be passed on to the applicant. Instead the cost must be borne by the Scottish Borders Assessor.

SECTION 6 – EXEMPTIONS

- 6.1 Within the Act are a number of exemptions – absolute and non-absolute – that can be applied, thereby preventing the release of information to an applicant.
- 6.2 Information covered by **absolute exemptions** need not be released. Examples include:
- information otherwise accessible, for example via the publication scheme or in published hard copy, regardless of whether payment is required; however, information available solely on the internet is not included as not everyone has access to the internet
 - disclosure prohibited by enactment
 - court records of proceedings or other relevant legal documents

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- information that, if disclosed, would constitute a breach of confidence
- personal data, as defined by the Data Protection Act, 1998 ([see section 7](#))

6.3 **Non-absolute exemptions** are subject to a “public interest test”, meaning that we have to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing it. Examples include:

- information to be published within the next twelve weeks, from the date of request
- research information, if its release could substantially prejudice the research programme
- commercially sensitive information
- law enforcement information (including any form of tax assessment)
- information that may endanger the health and safety of an individual if disclosed

It is worth noting, however, that potential embarrassment to the public authority if information is released is **not** adequate grounds for it being withheld.

6.4 Any request received that could be subject to an exemption should be dealt with by the Responsible Officer. On receiving such requests, frontline staff should **immediately** forward them on to the Responsible Officer.

SECTION 7 – DATA PROTECTION

7.1 The Data Protection Act 1998 protects information that is held about individuals by public authorities. Individuals can ask for and receive a description of the personal data held about them (a “subject access request”).

7.2 Information is exempt from the Freedom of Information (Scotland) Act if it is a request for information from an individual about themselves. Such a request should be handled under Data Protection legislation. The applicant should be notified of this transfer and the different procedures that apply.

7.3 Requests for information about other living individuals should be dealt with under the Freedom of Information (Scotland) Act but can be refused on the basis that they breach the principles of the Data Protection Act.

7.4 Any request received that may come under the jurisdiction of the Data Protection Act should be dealt with by the Responsible Officer.

SECTION 8 – ENVIRONMENTAL INFORMATION

8.1 Staff should note that requests for access to environmental information may come under the jurisdiction of The Environmental Information (Scotland) Regulations 2004 (EIR) rather than FoI. Examples of subjects dealt with under EIR include emissions into the environment, nature sites, roads, sewage and even air-conditioning systems.

8.2 Though EIR and Fol are closely aligned, there are some key differences:

- requests for environmental information do not have to be in writing but can be made orally
- a 40 day response time can apply for complex or voluminous requests
- there are no absolute exemptions under EIR
- fees charging is different

8.3 If you consider that a request falls under EIR rather than Fol, any such requests should be passed to the Responsible Officer.

SECTION 9 – REFUSING REQUESTS

9.1 If an exemption applies to the information requested, and Scottish Borders Assessor’s staff decides not to release the information, the applicant must be provided with a written refusal notice. This must be sent within the 20 working day timescale.

9.2 A refusal notice must contain the following information:

- that we hold the information
- that we are claiming an exemption
- why the exemption applies
- in the case of non-absolute exemptions, why the public interest in maintaining the exemption outweighs the public interest in disclosing it
- details of our review procedure ([see section 12](#))

A template for a refusal notice can be found in [Appendix 3](#) of this policy.

9.3 Refusal notices can also be issued if the cost of complying with the request would exceed an upper cost limit ([see section 11](#)).

9.4 Requests can be refused if they are “vexatious” or “repeated” (an identical or similar request from the same person received in a short period of time). Again, the applicant should be sent a refusal notice within 20 working days. However, these reasons for refusal should be used sparingly and as a last resort only, especially as the Act does not specifically define the term “vexatious”.

9.5 If in any doubt as to the correct course of action, the decision should be made in conjunction with the Responsible Officer. Additional advice can be obtained from Scottish Borders Council’s Data Compliance Officer ([see section 14](#)).

9.6 In the event that the refused request may later be investigated by the Scottish Information Commissioner, it is very important that adequate records are kept of such cases.

9.7 **Refused requests for information must be reported to Ross Welsh prior to a refusal notice being sent.**

SECTION 10 – TRANSFERRING REQUESTS

- 10.1 If an applicant requests information that is not held by Scottish Borders Assessor but there is reason to believe that it is held by another public authority (e.g. Scottish Borders Council), the following course of action should be followed:
- 10.2 The other public authority must be contacted to confirm that the information is held by them.
- 10.3 If this is the case, the applicant must be promptly informed. At this point the applicant should be given two options. They can:
- re-apply for the information themselves by contacting the relevant public authority, or
 - request that Scottish Borders Assessor handle the transfer of the information request to the relevant public authority
- 10.4 If the request for information is to be transferred, staff must write to the applicant:
- confirming the transfer of the request
 - detailing the new contact details
 - informing the applicant that the statutory period of dealing with the request will now run from receipt of transferred request
- 10.5 Instances may arise where Scottish Borders Assessor holds the majority of the information requested but the remainder is held elsewhere. Where practicable, one combined response should be supplied to the applicant, assuming that this will not cause a significant delay or additional costs.
- 10.6 Responsible Officers should monitor those instances where requests are transferred to another public authority ([see section 13](#)).

SECTION 11 – CHARGING

- 11.1 Fees can be levied for particularly complex or lengthy enquiries but the vast majority of requests for information will not incur a charge. This is because the first £100 of “projected” costs must be provided free of charge.
- 11.2 If the estimated costs exceed £100, the cost of the request must be formally calculated. A £600 upper limit exists on these costs, after which we do not have to comply with the request.

The authority can charge for:

- direct or indirect costs incurred in locating, retrieving and providing the information requested
- providing the information in the format preferred by the applicant (i.e. CD-ROM, photocopying)

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However, the authority cannot charge for:

- costs incurred in deciding whether or not to release the information
- costs incurred in determining whether we actually hold the information; if we have difficulty finding the information because of poor records management, we cannot pass on these costs to the applicant
- providing the information in an alternative format as per our duty under the Equality Act 2010

11.3 When calculating the cost of staff time, the amount cannot exceed £15 per hour regardless of who is undertaking the work. The costs passed on to the applicant should accurately reflect the grade of the employee carrying out the work.

11.4 Only 10% of the projected cost can be passed on to the applicant, meaning in effect, that the maximum amount that can be charged for a request for information is £50 (the upper cost limit is £600: 10% of £600 is £60, minus £10 for the first £100 of work which must be provided free of charge).

11.5 If a request for information is going to incur a charge, a Fees Notice must be issued. This must include:

- a detailed breakdown of the projected costs
- advice about the procedure for dealing with complaints and the right of appeal

A template for a fees notice can be found in [Appendix 4](#) of this policy.

At this point the applicant can decide to proceed with the request or decline the quote. At this point no work should have been undertaken regarding the request. If the fee is not paid within three months, the request can be treated as withdrawn, though the applicant must be contacted in writing confirming this.

11.6 Accounts will be issued by Keith Hardie or Christel Kerr.

SECTION 12 – REVIEWS

12.1 An applicant may be dissatisfied with the response that they received from the Assessor's staff. For example, they may consider that they did not receive adequate advice and assistance, or that their request was refused without good reason. In such cases, the applicant can request that a review be carried out, investigating the way the request was handled and the decision that was reached.

12.2 Applicants should be advised that they have 40 days to lodge a written "requirement for review". The following information should be included:

- address for correspondence
- a description of the original request

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- why he/she is dissatisfied
- 12.3 All reviews will be handled by the Assessor.
- 12.4 The applicant will receive a response within 20 working days explaining the findings of the review and advising them of their rights to complain to the Scottish Information Commissioner.

SECTION 13 – MONITORING

- 13.1 It is the responsibility of the Responsible Officers to keep a log of information requests that are forwarded to them.
- 13.2 The Act states that the following information should be recorded:
- the number of requests that have been refused and the reasons for the refusal
 - the number of requests for which a fee is charged
 - the number of reviews which have been carried out and their outcome
 - the number of instances when the time limit was exceeded and why
- 13.3 The Responsible Officer should log all requests for information on a database including the information required for 13.2.
- 13.4 From 1 April 2013, the Scottish Information Commissioner will collect FoI statistics on a quarterly basis via an online collection system. The Responsible Officer should ensure that the statistics are provided to the Commissioner.

SECTION 14 – RESPONSIBLE OFFICERS

14.1	Title	Name & Location	Telephone Number
	Responsible Person	Ross Welsh Assistant Assessor & Electoral Registration Officer, Old School Building, Council HQ, Newtown St Boswells, Melrose, TD6 0SA	01835 825100
	Back-up Responsible Person	Christel Kerr Principal Registration & Rating Officer Old School Building, Council HQ, Newtown St Boswells, Melrose, TD6 0SA	01835 825100

SECTION 15 – APPENDICES

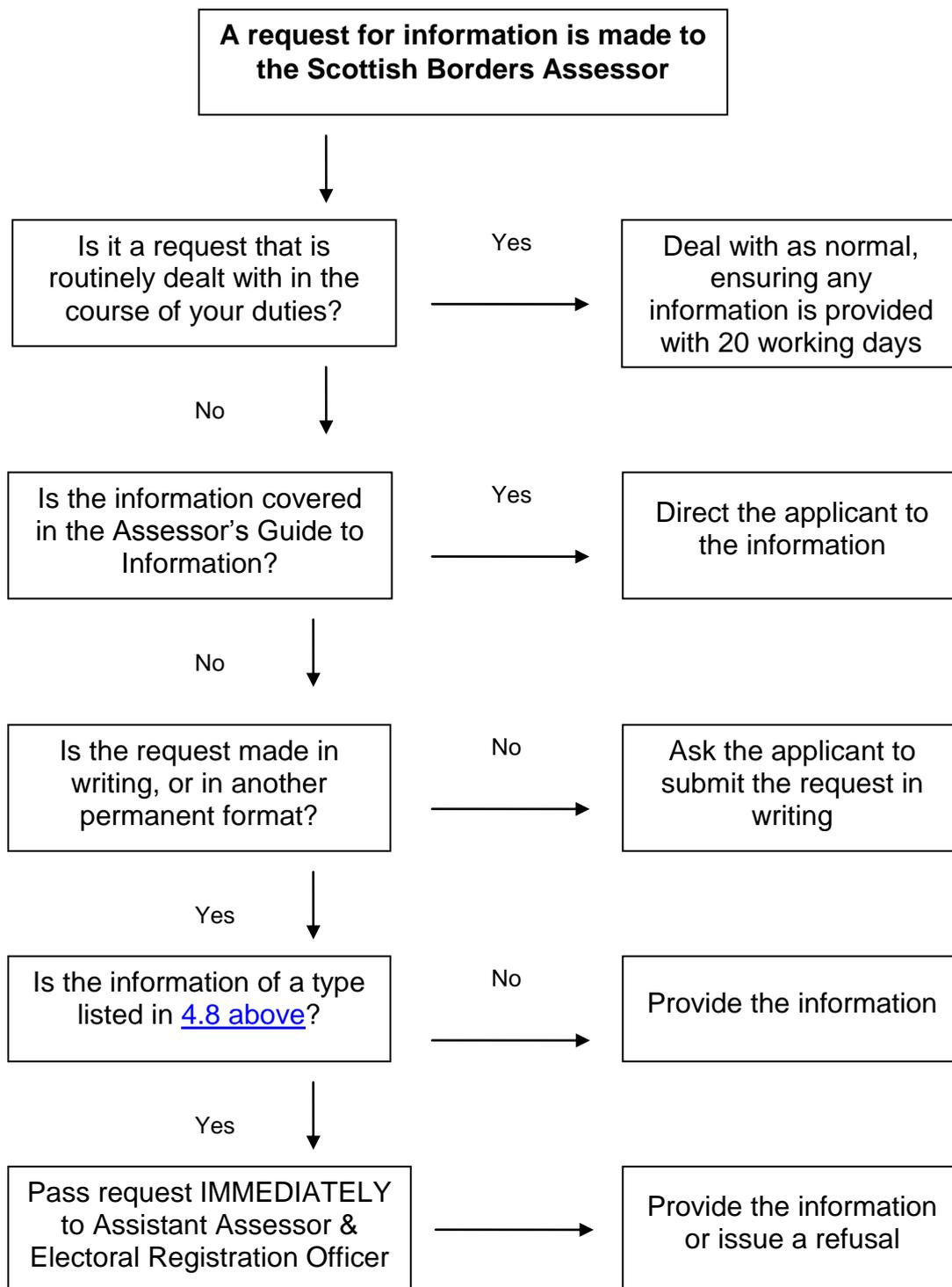
[APPENDIX 1 - Flowchart: Frontline Staff - Dealing with Requests](#)

[APPENDIX 2 - FoI Representatives Key Responsibilities](#)

[APPENDIX 3 - Template for Refusal Notice](#)

[APPENDIX 4 - Template for Fees Notice](#)

FRONTLINE STAFF – DEALING WITH REQUESTS



Responsible Officers

Key Responsibilities

1. To be a source of guidance and advice on Freedom of Information matters within the Scottish Borders Assessor's Department.
2. To participate in Fol training, as and when appropriate.
3. To co-ordinate the answering of requests for information that front line staff are unable to deal with in the normal course of their duties.
4. To handle requests for information that may be subject to exemptions.
5. To handle requests for information that may include personal information as defined by the Data Protection Act 1998.
6. To handle refusals to release information – including the drafting of refusal notices – in collaboration with the Assessor.
7. To oversee the transfer of requests from the Scottish Borders Assessor to other Scottish public authorities.
8. Where relevant, to calculate fees to be levied on requests for information and issue fees notices.
9. To monitor requests for information and forward that information to the Assessor's Management Team on a quarterly basis.
10. To complete the Scottish Information Commissioner's quarterly statistical return.

APPENDIX 3
Template for Refusal Notice

*Contact details of FoI
Responsible Officer*

*Name and address of
Applicant*

Date

Dear X

Freedom of Information Request Refusal Notice

Information Requested

I received your request for information on *[date]* relating to the following topic:

[summary of request for information]

Reasons for Refusal

I confirm that we hold the information requested but are refusing your request, as set out under Section 18 of the Freedom of Information (Scotland) Act 2002. The decision to refuse your request was made on *[date]* by *[name and job title of officer]*.

The reason(s) for this refusal is/are as follows:

- a. the information is subject to absolute exemption
[state which exemption as per Part 2 of the FoI Act. Explain the reason(s) for using the exemption]
- b. the information is subject to a non-absolute exemption
[state which exemption as per Part 2 of the FoI Act. State the reason(s) why it is in the public interest to withhold this information rather than release it]
- c. the information requested would incur fees that exceed the upper limit as set out in the Fees Regulations in Annex 3 of the Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002.
[include the projected costs calculations]

Review Procedure

If you are dissatisfied with this decision to withhold information, or the way in which I have dealt with your request, you are entitled to require a review of this decision. Please note that in order for a review to take place, you must:

- lodge a written “requirement for review” within 40 working days of the date of this notice
- include your address for correspondence, a description of the original request and the reasons why you are dissatisfied

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- address your review request to the Assessor:

Brian Rout, MRICS AEA (Cert – Scotland)
Assessor & Electoral Registration Officer
Old School Building
Council HQ
Newtown St Boswells
Melrose
TD6 0SA

Email: brou@scotborders.gov.uk

The review will be handled by a member of staff not involved in the original decision. You will receive notice of the result of your review within 20 working days. It will explain the findings of the review as well as details of how to appeal to the Office of the Scottish Information Commissioner if you are dissatisfied with the review decision reached by the Assessor.

If you have any further queries about this process, please do not hesitate to get in touch.

Yours sincerely

*Name and address of
Applicant*

Date

Dear X

Freedom of Information Request Fees Notice

This Fees Notice is submitted by the Scottish Borders Assessor in accordance with Section 9 of the Freedom of Information (Scotland) Act, 2002. The fees must be paid within three months beginning the day this fees notice is received.

If you do not wish to proceed with this request, please formally decline this quote by writing to the address above. If the fees are not paid within the prescribed three month period, the request will be treated as withdrawn.

Once the Assessor is in receipt of your payment, we will respond within 20 working days. Please make any cheque payable to Scottish Borders Council.

Fees Regulations

The fees are calculated in accordance with the Fees Regulations made under the Freedom of Information (Scotland) Act, 2002. They state that:

- The first £100 of costs are provided free of charge.
- Where projected costs include the cost of staff time in locating and retrieving the information, the cost of staff time must not exceed £15 per hour for each member of staff engaged on the task. This is a maximum rather than a standard rate to be applied in every case, particularly where staff costs prove to be lower.
- For projected costs above £100, the council may make a charge of 10% of those costs up to the prescribed amount.
- The prescribed amount is £600. The council may charge for provision of information above that limit, but are not obliged to do so. Above the limit, the council may recoup all projected costs (bearing in mind that staff time remains subject to the maximum rate of £15 per hour).

Information Requested

I received your request for information on *[date]* relating to the following topic:

[summary of request for information]

Projected Costs

The estimated costs likely to be incurred in answering your request for information are as follows:

Example

Locating and retrieving all the information will take the same 2 members of staff 2 full days to complete.

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<i>Actual cost of staff time:</i>	<i>£8.50 per hour x 15</i>	<i>= £127.50</i>
	<i>£14.00 per hour x 15</i>	<i>= £210.00</i>
<i>Photocopying:</i>	<i>50 x A4 sheets at 10p per sheet</i>	<i>= £5.00</i>
		<i>= £342.50</i>
<i>The charge will be:</i>	<i>£337.50 minus £100</i>	<i>= £237.50</i>
	<i>£237.50 x 10%</i>	<i>= £23.75</i>

Methods of Payment

You will receive an invoice several days after you receive this fees notice, which gives details of how to pay. If you do not wish to accept this quote, the invoice can simply be ignored.

Review Procedure

If you are dissatisfied with the way in which I have dealt with your request, you are entitled to require a review of this decision. Please note that in order for a review to take place, you must:

- lodge a written “requirement for review” within 40 working days of the date of this notice
- include your address for correspondence, a description of the original request and the reasons why you are dissatisfied
- address the review request to the Assessor:

Brian Rout, MRICS AEA (Cert – Scotland)
Assessor & Electoral Registration Officer
Old School Building
Council HQ
Newtown St Boswells
Melrose
TD6 0SA

Email: brout@scotborders.gov.uk

The review will be handled by a member of staff not involved in the original decision. You will receive notice of the result of your review within 20 working days. It will explain the findings of the review as well as details of how to appeal to the Office of the Scottish Information Commissioner if you are dissatisfied with the review decision reached by the Assessor.

If you have any further queries about this process, please do not hesitate to get in touch.

Yours sincerely

Assessor & Electoral Registration Officer