I attach a copy of NO2ID's response to the Draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007 in the form provided, but wish to lodge an objection that the questions themselves are based on a false premise - i.e. that the Regulations are appropriate and should be brought into force. They should not.

Freedom of Information is one of the foundations of a healthy democracy. It is in the public interest that we should have transparent, accountable government and public authorities - and it is in the interest of the authorities themselves to be so, if they wish to retain the trust of the people.

NO2ID interprets these Regulations as nothing less than an attempt to sabotage the Act.

The Frontier Economics report (October 2006) found that FoI costs central government a total of £24.4 million per year, and so - given the budget of central government - it is beyond belief that DCA should attempt such a dramatic and fundamental reversal solely on the basis of making a few savings. The only conclusion one can draw is that the government wishes to avoid embarrassing revelations, and is deliberately crippling the Act to this end.

Given the hundreds of millions wasted each year on, e.g. failed IT projects, Freedom of Information should be supported and enhanced for the benefits and value that it brings to our country - not be pared back to such an extent as to make the Act more of an excuse for NOT revealing information, than a measure to encourage disclosure.

I hope that the government will attend to these concerns and drop the new proposals forthwith.

Sincerely,

Phil Booth
National Coordinator, NO2ID

Box 412, 19-21 Crawford Street, London W1H 1PJ
Telephone: 020 7793 4004/4005
http://www.no2id.net

Department for Constitutional Affairs
Justice, rights and democracy

Draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007

List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please email your completed form to: informationrights@dca.gsi.gov.uk **Thank you!**

Question 1.	Are the Regulations prescriptive enough to ensure consistent calculation of the appropriate limit across public authorities or should they contain more detail? For example, taking into account the differing formats and quantity of information requested, should a standard reference (i.e. a 'ready reckoner') for how long a page should take to read be included in the Regulations or guidance?
Comments:	Further prescribing 'reading/examination' time would exacerbate what is already one of the main problems with the draft Regulations. There is a huge difference between "determining whether information is held" and/or "locating" information, and reading each and every page of any documentation found. In many cases, examining the content in detail may be completely unnecessary – for example, when the request is for a named document or documents. To add a standard reference for how long a page should take to read would provide a simple mechanism by which requests for any long document could be refused.

Question 2.	Does the inclusion of thresholds in the regulations provide sufficient flexibility, taking into account the differing complexity of requests received?
Comments:	No. Given that the inclusion of "consultation" and "consideration" time will tend to increase the calculated cost of dealing with a request, the thresholds will in practice tend to introduce greater *inflexibility* into the process. Even assuming the best intentions on the part of the public authority, to add in further Regulated elements to the calculation will almost

inevitably affect their assessment – “Oh, we should now factor in these things, too.” The more you define a process, the more rigidly it will be applied. The only “flexibility” provided will be the range of excuses that public authorities will now be able to use to refuse requests.

Question 3.	Are the thresholds the right ones to make sure the balance is struck between allowing public authorities to count these activities but not refuse requests on one of these grounds alone?

Comments: The question deliberately misses the point. If the “appropriate limit” for refusing a request is £600 for central government and £450 for the wider public sector, and the possible ceiling totals for consultation and consideration are £800/£600, then it is quite obvious that requests could be refused on this basis. To imply that a “balance” could be struck by counting just ONE of these activities is meaningless. Clearly, more sensitive requests are going to require *both* consultation and consideration – and will therefore tend to be turned down on the basis of the combined total.

[The NO2ID campaign is appalled at the implicit bias in this question. That it is so obviously skewed raises serious doubts as to the intention of this consultation. Failing to take into account the most obvious practical application of these Regulations is suspect at best.]

Question 4.	Are the regulations as drafted the best way of extending the aggregation provision?

Comments: No. To aggregate non-similar requests is utterly unjustified. For people – or more likely, organisations – to be prevented from making more than one request at a time runs entirely counter to the spirit of Freedom of Information. In effect, it will tend to reduce accountability and provide inefficient or badly-performing public authorities with an excuse to dodge broader examination of their operations by concerned parties. It is hard to see how allowing just one request per person/organisation every 60 days can be in the public interest.

To aggregate related requests is plainly a mechanism by which *detailed* probing of particular issues could be denied. It is to be expected that this would include a high proportion of more complex and sensitive requests which, by their very nature, are going to dig deeper than a straightforward request.

The best way forward would be to drop all the new aggregation provisions.

Question 5.	Do the factors that need to be taken into account when assessing if it is reasonable need to be explicitly stated in the regulations or can this be dealt with in the guidance?

Comments: These factors should be dropped altogether. The very fact that they are designed to target "persons who appear to be acting in concert or in pursuance of a campaign" reveals a clear intention to frustrate the public interest. Freedom of Information Act requests are a valid and entirely proper tool for campaigners and, e.g. investigative journalists – to assume otherwise betrays a disturbing level of institutional suspicion. These proposals could reverse an otherwise laudable trend towards greater transparency in (some) public authorities, and will undermine trust in the very government that first introduced these measures.

On a point about legislative process, but in no way supporting the proposals: to include critical factors in "guidance" alone will tend to put the onus of interpretation onto the public authority. Either the assessment can be clearly defined, in which case it should be stated explicitly, or it cannot – in which case it is clearly unfit for purpose, and should be dropped. Lack of clarity in either Regulations or guidance could also be used to frustrate and turn down requests.

Question 6.	Are these the right factors?

Comments: No. Whilst it might in extreme circumstances be appropriate to turn down a series of related requests that indicate a personal vendetta or malicious time-wasting, to assume bad faith on the part of requesters simply because of the number, breadth or detail of the requests they are making is contrary to the spirit of Freedom of Information, and undermines the public benefit that genuine transparency can bring. It is inevitable and entirely understandable that some individuals and organisations will make more requests than others – yet DCA seems to be putting forward these statistics as a reason for neutering the Act / process.

To burden *every* request with a set of criteria that will tend to make it more likely to be turned down is an inappropriate and disproportionate response to a 'problem' (malicious requests) that represents only a tiny proportion of all requests. Rather than using the current volume of requests as an excuse to restrict the use of the Act, why not try to assist public authorities in more efficiently and effectively answering requests? It is perverse that these Regulations will actually reward inefficient authorities with wasteful processes – who will be better able to

avoid difficult disclosures – than decisive and efficient ones.

Question 7. What guidance would best help public authorities and the general public apply both the EIRs and the Act effectively under the new proposals?
Comments: As we fundamentally disagree with the new proposals, we cannot recommend any guidance for their application other than to ignore them completely. Of course, we hope that – assuming this consultation is not another whitewash – the proposals will be dropped, and that DCA will in future put its energy into enhancing and facilitating Freedom of Information, rather than trying to restrict and undermine it.