

WELCOME TO THE ENVIRONMENTAL INFORMATION REGULATIONS (EIR)

The new Environmental Information Regulations (EIR) 2004 came into force on 1 January 2005 and places a duty on public authorities to provide advice and assistance to an applicants request for environmental information. The Regulations are made under the European Communities Act 1972 and replace the Environmental Information Regulations 1992. In effect, environmental information is exempt from the Freedom of Information Act and is released or withheld under these Regulations.

What the EIR require the Council to do

- Proactively publish environmental information.
- Provide advice and assistance to persons making requests for environmental information.
- Make environmental information available to any person who requests it within 20 working days, or within 40 working days if additional time needed.
- Refuse only in accordance with the limited exceptions available, giving reasons and details of mechanisms available for reconsideration and appeal.
- Have in place an internal procedure to consider any complaints.

What is “Environmental Information”?

Includes any information in written, oral, electronic or any other material form on:-

- a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components including genetically modified organisms and the interactions between them.
- b) Factors such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment in a);
- c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements referred to in a) and b) as well as measures or activities designed to protect those elements;
- d) reports on the implementation of environmental legislation;
- e) cost benefit and other economic analyses and assumptions used in environmental decision making activities referred to in c); and

- f) the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they may be affected by the state of the elements referred to in a).

Application

“Environmental Information” is held by a public authority if the information:-

- a) is in its possession and has been produced or received by the authority; or
b) is held by another person on behalf of the authority.

Publication of “Environmental Information”

A public authority shall:-

- a) progressively make the information to the public available by electronic means which are easily accessible; and
b) take reasonable steps to organise the information relevant to its functions.

(The above does not apply to information collected before 1 January 2005 in non-electronic form).

Duty to make available “Environmental Information” on request

- Information to be made available no later than 20 working days after the date of receipt of the request (but see under “Extension of time”).
- The duty does not extend to including personal data of which the applicant is the subject.
- The information must be up to date and accurate.
- Where information is made available and the applicant requests information of the place where information can be found on the measurement procedures, methods of analysis, sampling and pre-treatment of samples, used in compiling the “Environmental Information” or the standardised procedures used then the authority shall inform the applicant accordingly.

N.B. Anyone or any organisation can make a request from anywhere in the world. No reasons need to be given. The request can be made in writing, by email, orally over the telephone or at reception or by sign language.

Form and format of the information

An applicant may request the information to be made available in a particular form or format and the authority shall comply with the request, unless:

- It is reasonable for the information to be made available in another form or format.
- The information is already publicly available and easily accessible to the applicant.

If the information is not made available in the form or format requested then:

- An explanation of the reason for the decision is to be given no later than 20 days after the date of receipt of the request for information.
- Provide a written explanation, if requested.
- Inform the applicant of the right to make representations to the authority no later than 40 days after the date the applicant believes the authority has failed to comply with the requirement (see Representations and reconsiderations).

Extension of time

- Provide an authority notifies the applicant within 20 working days after the date of receipt of the request the authority may extend the response time for providing complex or large amounts of information up to 40 working days.
- The authority can refuse to provide the information if the request is impracticable (i.e. unreasonable because of the complexity or volume involved). Again this must be done no later than 20 working days after the date of receipt.

Charging

- The authority may charge an applicant for “Environmental Information” but not for:-
 - Access to public registers or the lists of environmental information;
 - examining the information at the appropriate office or building.
- The authority can require payment in advance and is not required to make available the information requested unless the payment is received no later than 60 working days after the notification of payment was given.
- The time which elapses between notifying the applicant of the payment required and receiving the payment is disregarded for the 20 working day response time.
- The authority must publish and make available to applicants its schedule of charges and the circumstances in which a charge maybe levied or waived (i.e. charges are published in, or cross referenced in the Council’s Publication Scheme).

Advice and assistance

- The authority must provide reasonable advice and assistance to applicants and prospective applicants.
- If the request is too general then the applicant can be asked, within the 20 working days response time, to provide more particulars in relation to the request and must assist the applicant in providing those particulars (this could take the form of offering options).
- The authority shall conform to the code of practice on the Environmental Regulations in relation to the provision of advice and assistance.

- When the further particulars are received then the 20 working days response time commences.

Transfer of a request

- Where the authority believes, when it receives a request, that another public authority holds the information requested then the authority shall either:-
 - Transfer the request to the other authority; or
 - supply the applicant with the name and address of that authority.

N.B. 1. The applicant may prefer to make a new request or may not wish to have the request transferred – the applicant should always be asked before any transfer is made.

2. When a request is transferred the request must be treated as a formal letter of refusal and therefore specify the reasons i.e. the information is not held by the Council and give information about the reconsideration procedure (i.e. applicants right of appeal).

Representations and reconsiderations (appeals procedure)

- An applicant may, in writing, make representations to the authority if they believe the requirements of the Regulations in relation to their request has not been met.
- Written representations must be made no later than 40 days after the date the applicant believes the authority failed to comply with the requirements.
- The authority must notify the applicant of its decision within 40 days after receipt of the representation.
- Where the authority decides it has failed to meet the requirements it must include in its notification to the applicant a statement of:-
 - The failure to comply;
 - the action the authority is taking to comply with the requirement; and
 - the time period when the action will be taken.

N.B. If the applicant is still unsatisfied following the reconsideration procedure of the authority, they may then appeal to the Information Commissioner. Subsequently, a further appeal to the Information Tribunal is available.

Exceptions to disclosure

The authority may refuse to disclose information if:-

- i. It does not hold the information;
- ii. the request for information is “manifestly unreasonable”;
- iii. the request is “too general”;
- iv. the request relates to unfinished documents or data;

v. the request involves the disclosure of “internal communications”.

Or disclosure would adversely affect:-

- a) International relations, defence, national security or public safety;
- b) the ability of a person to receive a fair trial, or a public authority to conduct an inquiry of a criminal or disciplinary nature;
- c) intellectual property rights;
- d) confidentiality proceedings of the authority where provided by law;
- e) confidentiality of commercial or industrial information where provided by law;
- f) the interests of the person who provided information voluntarily and has not consented to its disclosure.
- g) the protection of the environment to which the information relates.

The authority may also refuse to disclose if the public interest in maintaining the exception outweighs the public interest in disclosing the information.

N.B. Paragraphs d) to g) above do not apply where the disclosure relates to information on emissions to the environment.

Personal data

Disclosure does not extend to including personal data as covered by Data Protection Act 1998.

Refusals to disclose by the authority

- Must be made in writing and within the 20 working days response time (N.B. Keep a record).
- Must specify the reasons not to disclose including any exception(s) outlined above.
- Where the public interest test was applicable or personal data is involved then the matters considered in reaching the refusal decision.
- Where the request is related to unfinished documents or data then the refusal must specify the name of any other public authority preparing the information and the estimated completion time.
- The refusal shall inform the applicant of the authority appeal procedure and the right of appeal to the Information Commissioner under the Freedom of Information Act.

Offence of altering records with intent to prevent disclosure

Under the regulations an individual is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the authority, with the intention of preventing the disclosure of that information to the applicant.