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Freedom of Information (Part 1): What you can ask for and how to ask for it

You have a general right of access to information held by all public authorities.

There are three main ‘right to know’ laws. The Environmental Information Regulations 2004 (**EIRs**) which focus on the disclosure of “environmental information” held by public authorities, the Freedom of Information Act 2000 (**FOIA**) which deals with all other recorded information held by public authorities, and the INSPIRE Regulations 2009 (amended in 2012) which deal with access to spatial data (geographic information). These laws apply in England, Wales and Northern Ireland¹.

They can be found online:

- [Freedom of Information Act 2000](#)
- [Environmental Information Regulations 2004](#)
- [INSPIRE Regulations 2009](#) (as amended in 2012)

The EIRs apply to requests for **environmental information**, whereas the FOIA applies to requests for **all other recorded information**. This briefing focuses mainly on the EIRs and the FOIA. Broadly speaking the INSPIRE Regulations are based on similar principles to the EIRs, but applied to spatial data (geographic information) (for example the rules around refusing information requests are similar).

Your right to know applies to information held by ‘public authorities’, such as government departments, local councils or state schools (and in some circumstances private companies too).

The basic procedures for requesting information and appealing when information is not disclosed are broadly the same.

All you need to do is request information. If the information you have asked for is ‘environmental information’ then the public authority must consider your request under the EIRs. If you request any other information (not ‘environmental information’) then they must consider your request under FOIA.

It may be important whether the EIRs or FOIA apply to your request because the EIRs and FOIA contain different rules about situations where public authorities can refuse an information request. Also, the EIRs use a wider definition of ‘public authorities’ than the FOIA (see below for more detail on this).

So when is information ‘environmental’?

‘Environmental information’ is a broad definition and means any information about:

- the state of the environment (air, water, soil, land, natural sites etc)
- substances such as noise, radiation, waste or emissions that are likely to affect the environment
- policies, legislation, plans or programmes likely to affect the environment (including economic analyses)
- reports on environmental legislation
- the impact of the state of the environment on human health and safety

The full legal definition of ‘environmental information’ is set out in Annex 1 (at the end of this briefing).

Generally speaking **your rights to know are stronger under the EIRs than FOIA**. This means that you should try to make sure that any request you make for environmental information is dealt with under the EIRs and not under FOIA.

¹ In Scotland there are similar laws – though slightly more favourable to the requester.

The good news is that the courts have repeatedly decided that the definition of ‘environmental information’ must be applied broadly, meaning that there is lots of information that comes within the legal definition of ‘environmental information’ and which members of the public can therefore request under the EIRs. Some examples of information that would come within the definition are:

- Discussions within government about energy policy
- Information about illegal mine dumping
- Information about planning applications
- Information about the location of mobile phone masts
- Information about tolls to be charged as part of a major infrastructure project²
- Information relating to the proposed disposal of land by a local authority³
- The financial viability assessment for a major redevelopment project⁴

The bad news is that public authorities sometimes deal with requests for environmental information under FOIA because they have not realised that the information requested is actually ‘environmental information’.

What information can I get hold of?

Under FOIA and EIR you have a right of access to nearly **all recorded information that is held by ‘public authorities’**, regardless of when the information was created. That right is then subject to a number of specific exceptions (or ‘exemptions’) – discussed below.

The information you can request includes written documents like reports, correspondence, minutes of meetings, financial statements etc. However, it also includes information recorded in non-written forms, for example, photographs, maps, cassette tapes, DVDs, CDs, videos, CCTV footage, computer databases, post-it notes or emails.

If the information is not ‘recorded’ then you do not have a right to it. So, for example, you can request a copy of the written record of a meeting but, if no written record was made, you cannot ask the people who attended the meeting to tell you what happened at the meeting. This also means you cannot force a public authority to explain why it took a particular decision, but you can ask for copies of the written evidence on which the decision was based. However, in practice many authorities will be willing to explain decisions they have taken, at least to some extent.

1. Why only ‘public authorities’? Do I have rights to get information from companies?

² *Mersey Tunnel Users Association (MTUA) v Information Commissioner and Halton Borough Council* [EA/2009/0001, 24 June 2009]

³ *Omagh District Council v Information Commissioner* [EA/2010/0163, 20 May 2011]

⁴ *London Borough of Southwark v Information Commissioner, Lend Lease (Elephant and Castle) Limited and Glasspool* [EA/2013/0162, 9 May 2014]

The **FOIA** only applies to public authorities that are listed in the Act and to a small number of other bodies (such as companies like BNFL that are 100% owned by the UK Government). The broad categories include:

- Government departments, legislative bodies, and the armed forces
- Local government
- National Health Service
- Maintained schools and further and higher education institutions
- Police
- Other public bodies (this includes a list of individually named non-departmental public bodies) and publically owned companies (as defined in the Act).

The **EIRs** use a broader definition of what counts as a ‘public authority’, see Regulation 2(2):

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- “(2) ... “**public authority**” means—
- (a) government departments;
 - (b) all public authorities as defined in FOIA;
 - (c) any other body or person that carries out functions of public administration or
 - (d) any other body or other person, that is under the control of another public authority and—
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.” (emphasis added)
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This definition was tested in a series of cases brought by an environmental organisation called “Fish Legal” (formerly the ‘Anglers Conservation Association’). An EU judgment clarified what counts as carrying out “*public administrative functions*”, as well as being “*under the control of*” another public authority⁵ (see definition quoted above). The courts decided that the privatised water industry in England and Wales (a set of private companies) were covered by the EIRs regime, as they were recognised as ‘public authorities’ under Reg 2 (2) (c) due to the ‘special powers’ they had under the Water Industry Act 1991. Private companies operating within a legal framework to carry out services in the public interest can be public authorities for the purposes of the EIRs, and as such owe a public duty to disclose the environmental information they hold.⁶

Where a company is subject to the EIRs then you have the same rights of access to environmental information as you would for other public authorities. While this is very good news for information requesters who want to access information held by, for example, a waste management company, the difficulty is that those companies will not always accept that they are covered by the EIRs. Often you will need to challenge them by making a complaint to the Information Commissioner (see our separate briefing: **Your Right to Know (Part 2): refusals, exemptions and appeals**).

How to request information in practice

Initial Steps

Before you make an information request (unless it is very simple) it is worth doing some preliminary thinking. The four most important questions you need to ask yourself are:

- What information do I really want (and how can I make sure I only get the information I want)?
- Who is likely to hold it?

⁵ Case C-279/12: Judgment of the Court (Grand Chamber) of 19 December 2013, in *Fish Legal and Emily Shirley v Information Commissioner and Others*. <http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A62012CJ0279>

⁶ *Fish Legal v Information Commissioner, United Utilities, Yorkshire Water Services and DEFRA* [2015] UKUT 0052 (AAC).

- Do I really need copies of the information, or would it be sufficient to go and inspect the documents I want at an authority's offices?

Deciding what information you want

Decide what information you really want, and try to limit your request accordingly. Be as specific as possible about the type of information that you want, as you are more likely to get back something useful:

- Limit your request to a particular time period (for example, from January to July 2017)
- Limit your request to a particular type of information (for example, reports, letters or emails)
- If you want a particular piece of information, be as precise as you can (for example think about giving possible author names, dates of publication, committees involved, subject matter or issue etc)

The more specific you are the easier it is for the public authority to locate what you want and provide it to you within a reasonable time-frame.

Is the information already published by the authority?

Before making your request, have a look at the authority's Publication Scheme. This is required by law under the Freedom of Information Act 2000, and will help you to find out if any of the information you want is already published, and if so, where to locate it. You should be able to find the publication scheme easily on the authority's website. Public authorities are also under an obligation to make environmental information easily accessible to the public under the EIRs.

Do I really need copies of the information?

Sometimes it may be more efficient (and cheaper) to go and inspect the documents that you want to see before asking for copies. That will allow you to decide whether you really do need that information and to take copies only of the information you need. Sometimes public authorities will ask you to pay for the cost of producing copies and so you may be able to avoid some or all of that cost by inspecting the documents yourself.

Ask for help

It can be helpful to contact the authority (by phone, or in person) in advance to discuss your request and help you understand the information they might hold. You may want to contact someone in the department responsible for the information (for example, the planning department) or the authority's information officer or Freedom of Information Unit. Sending your request to the wrong person in an authority can waste time, so an initial conversation may help ensure that you have exactly the right contact details. Remember that authorities have a legal duty to provide reasonable advice and assistance to the public under the FOIA/EIRs.

Making your information request

Although you can request information in person or over the phone, we recommend that any request should be made in writing (for example in an email). Putting your request in writing means that you have a record of exactly what you requested and when you made your request.

You should also:

1. give your name and an address (postal or email)
2. describe the information that you want as clearly as you can.
3. ask them to confirm whether they hold the information and disclose it to you. This will enable you to know what information the authority has, even if they decide to withhold it.

You do not need to say what you want the information for but doing that could help the authority identify the information you are asking for and assist you further.

You do not have to say whether you are making the request under the EIRs or FOIA but, if you believe that you are requesting 'environmental information' we recommend that you state that you are making the request 'under the Environmental Information Regulations 2004'.

You can ask for as much information as you like and can make requests as often as you like. However, the authority can refuse your requests if they think the requests are 'vexatious' (a request where the information sought would be of no value to the requester or to the public⁷), or 'manifestly unreasonable'. The costs of providing the information requested are a factor that can be taken into account when deciding whether a request is 'vexatious' or 'manifestly unreasonable'⁸.

How quickly do I need it?

If you need the information in a particular hurry you should say so in your letter (and explain why, if you are willing to do so). This is particularly important in the case of the EIRs as the European Directive requires the authority to take into consideration any timeframe that you specify.

You should also remind the authority that it has a legal duty to provide the information "as soon as possible" in the case of environmental information, or "promptly" for other information.

Do I want the information in a particular form or format?

If you want the information in a particular form or format, say so clearly in your request. In cases involving large documents, it is often more efficient to ask for the information in electronic form. This could also avoid some reproduction costs.

Keeping records of any contact

Make sure you keep a note of conversations that you have about your request, including the date, the time, who you spoke to, and (roughly) what was said. This could be useful to ensure that any promises you are given are met. Follow-up all phone conversations with a short letter or email confirming what has been said.

Make sure you keep copies of all correspondence between you and the authority. This will be important if you need to request an internal review or appeal to the Information Commissioner.

Who do I send my request to?

Some public authorities recommend that you send your request to a specific person or email address. Other authorities allow requests to be submitted via social media (such as Facebook or Twitter). If you are unsure, contact the authority for advice and assistance.

What will happen once I make my request?

When you make a request for information, the public authority must tell you whether they hold the information that you have requested and, subject to various exceptions discussed below, must provide you with a copy of it within a fixed time-period.

The information must be sent to you within a maximum of 20 working days (usually four weeks). Ordinarily public authorities take most if not all of the time available to them. If you need the information more quickly than 20 working days then you should say so clearly in your request. Under FOIA requests must be answered 'promptly'. Under the EIRs the requested information should be supplied 'as soon as possible'. Public authorities should not wait until the 20th working day to respond to information

⁷ *Dransfield v The Information Commissioner* [2015] EWCA Civ 454

⁸ *Ibid.*

requests, particularly if you have told them that there is a reason why you need the information more quickly.

The FOIA does not allow extra time for searching for information, but does allow extra time for the authority to consider whether one of the exemptions allows them to refuse your request.

Under the EIRs, where a request is complex and involves a large amount of information a public authority is allowed to take an extra 20 working days (40 working days in total) to respond, but they must tell you this within the first 20 working days and explain to you why they need more time. If the reasons they give are not credible then tell them so and ask for them to give you the information as soon as possible.

Can they charge me for information requests?

The FOIA allows a public authority to recover some costs, such as for photocopying, printing and postage. They cannot normally charge for any other costs, such as for staff time spent searching for information, unless other relevant legislation authorises this.

The EIRs also allow a charge for making the information available. Any charge should be 'reasonable' – it should not exceed the costs incurred in making the information available and there should be no profit element in the charge. So, for example, a reasonable fee that covers the actual costs of photocopying or printing the information and a covering letter and the cost of postage could be levied. **Under the EIRs the authority may also include the cost of staff time in identifying, locating or retrieving the information from storage⁹.**

If you think that the charges are unjustified or too high then you can write back and challenge those fees before deciding whether to continue with your request. The public authority should be able to justify the charges they wish to make.

They **must** publish a list (known as a 'schedule') of their charges for environmental information and also information on instances when charges can be reduced or waived. If the authority has not published a schedule of charges, they cannot charge you for your information request.

An Information Tribunal case on access to copies of planning documents (such as planning applications) ruled such charges should normally be 10p per sheet for black and white A4 documents unless there was a good reason for higher charges¹⁰. This gives an indication of the level of charges that would be considered reasonable.

Authorities can never charge you:

- for accessing environmental information on public registers, and
- for inspecting environmental information at a public library or the authority's offices¹¹

In any case, you will never be charged simply for making a request and will always be told in advance that the authority considers that there will be a charge so that you can decide whether to proceed.

Is there a limit to the amount of Information I can ask for?

⁹ In *East Sussex CC v Information Commissioner* [2016] 2 CMLR 5 the European Court of Justice ruled that authorities could not charge for maintaining a database of information, but were entitled to charge for overheads attributable to the time spent by staff answering individual requests for information, provided the total charge was reasonable.

¹⁰ *David Markinson v Information Commissioner* (EA/2005/0014)

¹¹ See Reg 8(2) EIRs and *Kirklees Council v Information Commissioner* [2011] UKUT 104 (AAC)

No. You can ask for as much information as you like and can make requests as often as you like.

However, under FOIA (i.e., for non-environmental information) an authority can refuse your request if:

- It would cost too much or take too much staff time to deal with the request
- The request is vexatious (i.e. intended to frustrate or cause annoyance)
- The request repeats a previous request from the same person

There is an 'appropriate limit' for the costs of dealing with FOIA requests (this does **not** apply to requests under the EIRs). The public authority can refuse an FOI request if it will cost more than £600 (for central government) or £450 for all other authorities. Those figures are based on an official rate of £25 per hour for all work expected to be carried out in dealing with a request. Where a public authority claims that the appropriate limit will be reached it should provide advice and assistance to help you refine and limit your request so that it can be dealt with at a cost which is under the appropriate limit.

When deciding whether or not a request would exceed the 'appropriate limit,' an authority is only allowed to take into account the costs it reasonably expects to incur in relation to the following steps:

Reg. 4 (3) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, known as the Fees Regulations)

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- (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.”
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This means that when deciding whether the 'appropriate limit' will be exceeded the authority cannot, for example, take into account the time that they would need to consider which exemptions apply or which parts of the document to redact.

For requests under the FOIA that exceed the 'appropriate limit', an authority may either refuse to provide the information, or it may agree to provide it, but charge the full amount of the allowable costs (which will be at least £600 / £450) as well as any copying and communication costs.

For environmental information requests, authorities are not allowed to refuse to release the information just because dealing with your request would exceed the appropriate limit. However, they can charge for the full reasonable amount of staff time spent processing your request. In practice, authorities will often refer to the 'appropriate limit' as a guide when dealing with environmental information requests and encourage you to limit the scope of your request if the staff costs involved would exceed the 'appropriate limit'.

What should I do if my request is refused?

For more information on what to do if your request is refused and the exemptions that public authorities can rely on, please see our separate briefing: **Your Right to Know (Part 2): refusals, exemptions and appeals.**

ANNEX 1 – DEFINITION OF ‘ENVIRONMENTAL INFORMATION’

Regulation 2(1) of the Environmental Information Regulations 2004

"environmental information" [is] any information in written, visual, aural, 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 interaction among these elements;
 - (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 referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors 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 within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);"
-