

**October 2020**

# **Your Right to Know:**

## **Part 1 – What information can you ask for and how to ask for it**

Accessing information has many benefits: it allows public participation in decision-making, ensures transparency in government processes and makes public authorities more accountable for their decisions.

**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 Ireland.<sup>1</sup>

They can be found online:

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

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

**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 you ask for “environmental information” (defined below) then the public authority must consider your request under the EIRs. If you request any other information (not environmental information), then it must consider your request under FOIA.

It may be important whether the EIRs or FOIA apply to your request, because they contain different rules about whether public authorities can refuse a request. Also, the EIRs use a wider definition of “public authorities” than the FOIA (see below).

## 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 affect or are likely to affect the environment.
- Policies, legislation, plans or programmes (including economic analyses) that affect or are likely to affect the environment, directly or indirectly.
- Reports on the implementation of environmental legislation.
- The impact of the state of the environment on human health and safety, conditions of human life, cultural sites and built structures.

The legal definition of environmental information is set out in Annex 1 at the end of this briefing. The context of how and why the information was created and used is also a relevant factor, so even if the information is not “inherently environmental”, it may be subject to EIRs because of its wider significance and provenance.<sup>2</sup> However, just because a requester may have an environmental cause will not mean that the information requested is automatically environmental.<sup>3</sup>

Generally speaking, **your rights to know are stronger under the EIRs than FOIA**. So, try to make sure that any request you make for environmental information is dealt with under the EIRs rather than the FOIA.

The good news is that the courts have repeatedly decided that the definition of environmental information must be applied broadly, so there’s lots of information this covers and which you can request under the EIRs. There’s also a presumption in favour of sharing information, which means information should be disclosed wherever possible.

Some examples of information that 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 project<sup>4</sup>
- Information relating to the proposed disposal of land by a local authority<sup>5</sup>
- The financial viability assessment for a major redevelopment project.<sup>6</sup>

The bad news is that public authorities sometimes deal with such requests under FOIA, because they haven’t realised that what’s 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 held by public authorities**, regardless of when the information was created. That right is then subject to several specific exceptions (or “exemptions”) discussed in Part 2 of this briefing.

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

If the information is not “recorded” then you don’t have a right to it. For example, you can request a copy of the written record of a meeting. But if no written record was made, you can’t ask the people who attended the meeting to tell you what happened at the meeting. Also, you can’t force a public authority to explain why it took a decision, but you can ask for copies of the written evidence on which the decision was based. But in practice, many authorities will be willing to explain decisions they’ve taken, at least to some extent.

## Why only public authorities? Do I have rights to get information from companies?

The FOIA only applies to public authorities that are listed in the Act and to a small number of other bodies (such as companies that are 100% owned by the UK government, like BNFL). The 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 publicly owned companies (as defined in the Act).

The EIRs use a broader definition of what counts as a public authority – see Regulation 2(2):

“(2) ... “**public authority**” means–

- (a) government departments
- (b) any other public authority [as defined in the 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 falling within (a) (b) or (c) 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)

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*” under Reg 2 (2c), as well as being “*under the control of*” another public authority under Reg 2 (2d)<sup>7</sup> (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 (2c) due to the “special powers” they had under the Water Industry Act 1991, which meant they carry out functions of public administrations. 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 have a public duty to disclose environmental information they hold.<sup>8</sup>

Where a company is subject to the EIRs, you have the same rights of access to environmental information as you would for other public authorities. This is good news for information requesters who want to access information held by a waste management company, for example. Unfortunately, companies won’t always accept that they’re 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, do some preliminary thinking. The 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's likely to hold it?
- Do I really need copies of the information, or would it be enough to inspect the documents I want at an authority's offices?

### **Deciding what information you want**

Decide what 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're more likely to get back something useful:

- Limit your request to a time period (for example, from January to July 2017).
- Limit your request to a 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 give it to you within a reasonable timeframe.

### **Is the information already published by the authority?**

Before making your request, check the authority's Publication Scheme, which is required by law under FOIA, and will help you to find out if any of the information you want is already published and where to find it. You should be able to find the publication scheme easily on the authority's website. Public authorities are obliged 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 you want beforehand. Then you can decide whether you really need copies of the information. Sometimes public authorities will ask you to pay for copies, so by inspecting the documents you may be able to save money.

### **Ask for help**

It can be helpful to contact the authority 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), the authority's information officer or the Freedom of Information Unit. Sending your request to the wrong person in an authority can waste time, so an initial conversation may help ensure you have 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**

You can request information in person or over the phone for EIRs. But we recommend you make any request in writing (for example in an email), so there's a record of exactly what you requested and when. FOIA requests must be made in writing.

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 will disclose it to you. This will tell you what information the authority has, even if it withholds it.

You don't need to say what you want the information for. But doing so could help the authority identify the information you're asking for and assist you further.

You don't have to say whether you're making the request under the EIRs or FOIA. But if you believe that you're requesting environmental information, we recommend you state that you're making the request "under the Environmental Information Regulations 2004".

You can ask for as much information as you like and as often as you like. However, the authority can refuse your requests if they think they're "vexatious" (a request where the information sought would be of no value to the requester or to the public<sup>9</sup>), or "manifestly unreasonable". The costs of providing the information requested are a factor that can be considered when deciding whether a request is vexatious or manifestly unreasonable.<sup>10</sup>

### **How quickly do I need it?**

If you need the information quickly, say so in your letter and if you're willing explain why. This is particularly important in the case of the EIRs, as the European Directive requires the authority to take into consideration any timeframe you specify.

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 do, say so clearly in your request. In cases involving large documents, it's often more efficient to ask for the information in electronic form. This could also avoid some reproduction costs.

### **Keeping records of any contact**

Keep a note of conversations you have about your request, including the date and time, who you spoke to, and what was said. This could be useful to ensure that any promises you're given are met. Follow up all phone conversations with a short letter or email confirming what's been said.

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 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're unsure, contact the authority for advice and assistance. If you send your request to the wrong person, the authority should pass it to the relevant authority or give you its name.

### **What will happen once I make my request?**

Ordinarily, when you make a request for information, the public authority must tell you whether it holds the information you've requested.

If the information concerns personal data, national security, international relations, defence or public safety, the public authority may respond by neither confirming nor denying whether it holds this information or that it exists.<sup>11</sup> See Part 2 for further details. If the "neither confirm nor deny"

response is not applicable, then, subject to various exceptions discussed in Part 2, the public authority must provide you with a copy of the information within a fixed time period.

**The information must be sent to you within a maximum of 20 working days** (usually four weeks). Usually public authorities take most of this time. If you need the information more quickly than this, you should say so clearly in your request. Requests must be answered “promptly” under FOIA, while under the EIRs they must be answered “as soon as possible” Public authorities shouldn’t wait until the last working day to respond, particularly if you’ve told them that there is a reason why you need the information more quickly.

**The FOIA does not allow extra time** for the public authority to search for information, but does allow extra time for it to consider whether one of the exemptions allows it to refuse your request. The total time shouldn’t exceed 40 days.<sup>12</sup>

**Under the EIRs, where a request is complex and involves a large amount of information, a public authority is allowed to take 20 more working days** (40 working days in total) to respond. But it must tell you within the first 20 working days and explain why it needs more time. If the explanation isn’t credible then say so and ask to get the information as soon as possible.

## Can I be charged for information requests?

The FOIA allows a public authority to recover some costs, such as for photocopying, printing and postage. It can’t 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 such charges. Any charge should be “reasonable” – it shouldn’t exceed the cost of making the information available and there should be no profit element in the charge. So, a reasonable fee could cover the costs of photocopying or printing the information, a covering letter and postage. **Under the EIRs the authority may also include the cost of staff time in identifying, locating or retrieving the information from storage.**<sup>13</sup>

If you think the charges are unjustified or too high, you can write back and challenge them before deciding whether to continue your request. The public authority should be able to justify its charges.

It **must** publish a list (known as a “schedule”) of what it charges for environmental information and when charges can be reduced or waived. If the authority hasn’t published a schedule, it can’t charge you for your request.

An Information Tribunal case on access to copies of planning documents (such as planning applications) gives an indication of the charges that would be considered reasonable. It ruled such charges should normally be 10p per sheet for black and white A4 documents, unless there’s a good reason for higher charges.<sup>14</sup>

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 offices.<sup>15</sup>

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

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

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

However, under FOIA (ie, 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 (ie, 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 **doesn’t** apply to requests under the EIRs). The public authority can refuse an FOIA request if it’ll cost more than £600 for central government or £450 for all other authorities. These costs 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 this limit will be reached, it should provide advice and assistance to help you refine and reduce your request so that it can be dealt with at a lower cost, which is under this limit.

When deciding whether 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:

- (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 extracting the information from a document containing it.”

**Reg. 4 (3) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, known as the Fees Regulations)<sup>1</sup>**

- (d) determining whether it holds the information,
- (e) locating the information, or a document which may contain the information,
- (f) retrieving the information, or a document which may contain the information, and
- (g) extracting the information from a document containing it.”

So, when an authority considers whether the appropriate limit will be exceeded, it can’t include the time it would need to consider which exemptions apply or which parts of the document to redact, for example.

What happens with requests under the FOIA that exceed the appropriate limit? An authority may refuse to provide the information. Or it may provide it, but charge the full amount of the allowable costs (which will be at least £600 / £450), as well as copying and communication costs.

For environmental information requests, authorities aren’t allowed to refuse to release the information, just because dealing with your request would exceed the appropriate limit under FOIA. However, they can charge for the full reasonable amount of staff time spent processing your request.<sup>16</sup> Also, under EIR, costs will be taken into account by the public authority when

considering whether a request is manifestly unreasonable, although it can't be the sole reason to refuse a 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 this limit.

**What should I do if my request is refused?**

**For more information on this 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);”

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

<sup>2</sup> The Department for Business, Energy and Industrial Strategy v Information Commissioner and another (“Henney”) [2017] EWCA Civ 844

<sup>3</sup> Department for Transport and others v Information Commissioner and another [2018] UKUT 127 (AACO (12 April 2018))

<sup>4</sup> Mersey Tunnel Users Association (MTUA) v Information Commissioner and Halton Borough Council [EA/2009/0001, 24 June 2009]

<sup>5</sup> Omagh District Council v Information Commissioner [EA/2010/0163, 20 May 2011]

<sup>6</sup> London Borough of Southwark v Information Commissioner, Lend Lease (Elephant and Castle) Limited and Glasspool [EA/2013/0162, 9 May 2014]

<sup>7</sup> 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.

<sup>8</sup> Fish Legal v Information Commissioner, United Utilities, Yorkshire Water Services and DEFRA [2015] UKUT 0052 (AAC).

<sup>9</sup> Dransfield v The Information Commissioner [2015] EWCA Civ 454

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<sup>10</sup> Ibid.

<sup>11</sup> By contrast, under FOIA, all exemptions expressly permit public authorities to “neither confirm nor deny” that they hold the information

<sup>12</sup> ICO: Time limits for compliance under the Freedom of Information Act (Section 10) (July 2015)

<sup>13</sup> In *East Sussex CC v Information Commissioner* [2016] 2 CMLR 5 Case C-71/14 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.

<sup>14</sup> *David Markinson v Information Commissioner* (EA/2005/0014)

<sup>15</sup> See Reg 8(2) EIRs and *Kirklees Council v Information Commissioner* [2011] UKUT 104 (AAC)

<sup>16</sup> In *East Sussex CC v Information Commissioner* [2016] 2 CMLR 5 Case C-71/14 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.