

Environmental Information Regulations 2004 (EIR)

ADVICE AND ASSISTANCE - FREQUENTLY ASKED QUESTIONS

The requirement for public authorities to provide advice and assistance to applicants and prospective applicants is in both the EIR and the EIR code of practice. The Regulations state the legal requirements for public authorities. The EIR procedural code of practice states what level of procedural service it would be good practice for public authorities to attain (any reference to 'the code' within this guidance refers to the EIR procedural code of practice)

The provision of advice and assistance is a wide-ranging duty, and has the potential to be relevant to most, if not all, stages of the request process. Advice and assistance can simply be seen as the means by which a public authority engages with an applicant in order to establish what it is that the applicant wants and, where possible, assists them in obtaining this. In effect, it provides for good customer service.

The Regulation states:

"A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants."

The EIR also states that if a public authority has complied with the advice and assistance requirements as detailed within the EIR procedural code of practice, the authority will have complied with the EIR in respect of this obligation.

This document is split into three parts:

Part A addresses general issues surrounding the duty to provide advice and assistance.

Part B addresses the type of advice and assistance which may be required for potential applicants.

Part C addresses the type of advice and assistance which may be required once a request has been made.

Part A – General issues

1. How does a public authority judge what is a “reasonable” provision of advice and assistance?

A public authority should adopt a flexible approach and treat each application/potential application for information individually. In many straightforward cases, the nature of the advice and assistance to be offered will be clear at the outset. In other cases, discussion with the applicant will be necessary to establish what advice and assistance might be appropriate, and therefore reasonable. Once a request has been made this should be addressed promptly as the 20-day clock will be ticking (the majority of requests have to be responded to within 20 working days at the very latest). In general there will be no additional burden involved in the provision of advice and assistance as it is essentially a matter of good customer service. Consequently, much of the time, the duty to provide advice and assistance under the EIR will be fulfilled by the delivery of an authority’s usual customer service standards.

Examples of what is reasonable may include:

- advising a potential applicant of their rights under the EIR;
- assisting an applicant to focus their request, perhaps by advising on the types of information available within the request;
- advising an applicant if information is available elsewhere, and explaining how to access this;
- keeping an applicant advised of progress with regard to their request.

In all cases, the Commissioner strongly recommends that early contact is made with an applicant and that any advice and assistance should be delivered in a clear and intelligible manner.

2. In order to offer advice and assistance to an applicant, is it legitimate to enquire into the reasons why the request has been made?

No. The purpose of providing advice and assistance is to help an applicant to exercise their rights under the EIR; it cannot be the means by which a public authority seeks to discover the reasons for a particular, or potential, application. However, public authorities should bear in mind that regulation 9(2) of the EIR does allow them to request further information from the applicant if the original request is formulated in too general a manner. Paragraph 10 of the EIR procedural code of practice provides an indication of the types of assistance that can be offered so that the applicant can describe the information they are seeking.

Whilst it will often be good practice to make contact with the applicant as soon as possible after the request is made, public authorities should be sensitive to

the circumstances of the applicant when considering the appropriate method of contact. For example, requests for information may be made in the context of complaints against the public authority. In such cases it may be inappropriate to contact an applicant by telephone – which would otherwise be the preferred means of establishing early contact – if this would give the impression of the public authority exerting undue pressure on the applicant.

3. Will other statutory provisions influence the advice and assistance that a public authority should offer?

It is for each public authority to determine whether the requirements of other pieces of legislation will impose further obligations in relation to how they may advise and assist an applicant for information. For example, compliance with the Disability Discrimination Act 1995 may impose requirements on how an authority responds to requests for information from a disabled applicant. In the same way, there may be statutory provisions – such as the Welsh Language Act and the amended Race Relations Act 1976 – which require certain public authorities to provide information in other languages.

4. Is a public authority limited to providing the advice and assistance highlighted in the EIR code of practice in order to comply with the EIR?

Conformity with the advice and assistance requirements detailed in the EIR procedural code of practice will ensure compliance with regulation 9 of the EIR, and therefore fulfil public authorities' legal obligations. However, in terms of best practice, it may be possible to provide advice and assistance that exceeds the requirements of the EIR code of practice. The circumstances of each case will determine the most appropriate course of action, which again emphasises the need for public authorities to adopt a flexible approach.

Part B – Potential applicants

5. In what circumstances might a public authority offer advice and assistance to people who propose to make a request?

Circumstances may include:

- Where someone has made it clear that they intend to make a request for information. Examples of advice and assistance in such cases will include explaining the types of information the authority holds and charging policy of the authority, and whether the different form and formats which may be requested may affect the charging. Some information may already be available through the public authority's publication scheme (where it has one); if so, the applicant should be advised of this.

In addition to the above, public authorities should consider what information can be made available on a proactive basis which would assist people in the event of them making a request for information at some time in the future. General promotion of the right to access information via the public authority's website is one example of this. Also, paragraph 6 of the EIR procedural code of practice recommends that each public authority should provide details of its procedures for dealing with requests (by means of its publication scheme where it has one). This will be an important means of providing general advice to a wide range of potential applicants.

Part C – Once a request has been received

6. Which staff within a public authority should have responsibility for providing advice and assistance once a request is received?

As a request for information under the EIR can be received anywhere in an organisation it is important that all staff whose role brings them into contact with the public and other organisations are able to identify a request for information and provide appropriate advice and assistance to applicants where possible. Where this is not possible, the request should be passed to the appropriate person/department. This relates to the wider issue of general awareness-raising and staff training at various levels throughout an organisation. It will be for each public authority to determine its own procedures for handling information requests.

7. Once a request has been received, does the 20 working day period stop whilst a public authority offers advice and assistance to the applicant?

If the request has been formulated in such a general manner that the public authority is unable to distinguish what information the applicant is requesting, the public authority is able to ask for clarification from the applicant. In this situation, the 20 working day clock stops and re-starts when further clarification from the applicant is received.

In all other cases of advice and assistance, the 20 working day clock does not stop.

For further information regarding timescales please see guidance document "Time for Compliance".

8. What further information can be requested by a public authority to assist it in identifying and locating the information requested by an applicant?

In cases where more information is required, an applicant should be contacted as soon as possible (the EIR procedural code of practice suggests that contact is made by telephone, fax or e-mail), and public authorities should

be prepared to explain why they are asking for more information. Paragraph 10 of the EIR code of practice gives examples of assistance that may be appropriate, but public authorities should be flexible in this regard.

As discussed in the answer to question 2, the EIR code of practice stresses the importance of not giving the impression that a public authority is enquiring into the reasons behind a request:

“Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest or that he or she will be treated differently if he or she does.”

9. If an applicant does not respond to the advice and assistance that is provided by a public authority, is the authority obliged to offer advice and assistance a second time?

In most cases a public authority will not be required to contact the applicant a second time, for example where the applicant simply elects not to follow the advice and assistance offered by the authority. Paragraph 12 of the EIR code of practice provides the example of an applicant failing to clarify a request following assistance offered by the authority. However, there may be cases where there is genuine doubt whether the advice and assistance has been received by the applicant. Here, it would be sensible for the public authority to re-issue the advice and assistance.

It is good practice for a public authority to keep a record of the advice and assistance that has been provided; this would assist in the event of any dispute that such advice was in fact given.

10. What sorts of advice and assistance should be offered to someone who makes a request for information that relates to more than one piece of legislation, for example a request involving the EIR and the Freedom of Information Act?

Each public authority should develop its own procedures for handling such requests. However, the applicant should be informed at an early stage if their request spans legislation other than the EIR, and a clear explanation of the possible consequences should be given, for example, differences in timescale and possible charges.

11. If the authority estimates that complying with the particular form/format requested by the applicant will greatly increase the charge to the applicant what advice and assistance should be provided?

The authority may contact the applicant and explain what the options are and the related charges. The applicant may then make an informed decision as to the form and/or format in which they wish to have the information provided.

12. If an applicant requests that information be provided in a particular form/format, but it is not reasonable for the public authority to do so, what advice and assistance should be provided?

The authority must contact the applicant and explain why it is not reasonable to provide the information in the form and/or requested. If there is a choice of alternative forms/formats, the authority can explain these options and the applicant may then make an informed decision

13. If an applicant indicates that they are not prepared to pay the fee requested by the public authority, is the authority still obliged to offer any advice and assistance?

Paragraph 13 of the EIR code of practice explains that in these circumstances the public authority should consider what, if any, information may be provided to the applicant free of charge. It might also be good practice for a public authority to consider assisting in refocusing the request by explaining what sorts of information may be available for a lesser fee.

14. If a public authority receives a request which it believes to be manifestly unreasonable, is there any advice and assistance that can be given?

It may be possible for an authority to provide part of the information which falls within a manifestly unreasonable request. Therefore the authority should speak to the applicant to determine what part of the request is most important to them, and determine whether this could be provided.