

Environmental Information Regulations 2004 (EIR)

MAKING A REQUEST FOR ENVIRONMENTAL INFORMATION - A GUIDE FOR APPLICANTS

FREQUENTLY ASKED QUESTIONS

The Environmental Information Regulations 2004 (EIR) give people the right to access environmental information from public authorities. This document will provide an overview of making a request for environmental information.

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1. Can I make a request for environmental information?

Yes. The right is not restricted; any person in the world can request environmental information (this includes organisations as well as individuals).

2. Who can I request environmental information from?

Requests can be made to public sector organisations and non-public bodies carrying out a public function, for example utility companies.

3. How can I make a request?

Requests for environmental information can be made verbally or in writing (hard copy/electronic). Larger public authorities may have a designated enquiry line, e-mail/post address. However, a request can be made to any employee of a public authority. If you are able to direct requests to the appropriate person/section it is likely that the request will be dealt with more efficiently.

If a verbal request is made, we recommend that you note who you spoke to, the date, and what information you requested, you may wish to follow up a verbal request with a letter or e-mail confirming the terms of your request. A written record of a verbal request would be beneficial should your request result in a complaint to the Information Commissioner. This would assist the Commissioner in determining whether an authority has complied with the EIR.

4. What happens after I have made a request?

Regardless of whether the request itself was made verbally or in writing, public authorities must respond in writing.

A public authority has a responsibility to provide 'advice and assistance'. For example, if a request is too general, the public authority may contact you to try to determine what information is required.

Although authorities have a responsibility to assist you, they have no right to ask why you want the information. However, if you volunteer that information, it may help the public authority provide the most appropriate information. Even if the authority does know the purpose of your request, they are not able to take this into consideration when determining whether any information cannot be disclosed.

5. How long does an authority have to respond to my request?

An authority must respond as soon as possible and at the latest within 20 working days, except in circumstances where the information requested is particularly complex and voluminous. In such cases the time limit can be extended by a further 20 working days. If the time limit is extended, the public authority must notify you of this delay within 20 working days of your initial request, and state when they believe they will be able to respond in full.

6. Do I have to pay for the information?

A public authority **cannot** make a charge for allowing you:

- (a) access to any public registers or lists of environmental information, or
- (b) to examine the information (at a place chosen by the public authority).

For all other situations, charging is at the discretion of the public authority (any charge must be reasonable).

There is also a requirement for public authorities to publish a schedule of charges (for example the price per sheet of photocopying), information on the circumstances in which charges may be made or waived, and where advance payment will be required.

Further specific guidance regarding charging will follow shortly.

7. Does a public authority only have a duty to disclose information which it produced?

No. Under the EIR, any environmental information authorities hold can potentially be disclosed if requested, it is irrelevant whether that authority produced the information or whether it owns it.

8. Is there any reason why I should not receive all the information I requested?

You will not receive the information requested if the authority you sent the request to does not hold it.

There are also certain restrictions on the right to access environmental information. These restrictions are applicable to certain categories of information (e.g. national security information). However, even if the information falls within one of the categories, if it is in the public interest for the information to be disclosed, it will be.

If a public authority determines that the information can not be released because it falls within one of these categories and there is a stronger public interest in withholding the information than releasing it, they must inform you of this and explain their decision (including their reasons why it is in the public interest to withhold the information).

9. What happens if a public authority does not hold part/all of the information I requested?

When a request for information is received, the first task for the authority is to determine whether it holds the information.

If the authority does not hold **any** of the information requested but believes that another public authority does hold it, they must either:

- transfer the request to another authority which they are confident holds the information (as a matter of good practice an authority should always ask for your consent prior to transferring your request), and send you a refusal notice stating that they do not hold the information, or
- send you a refusal notice stating they do not hold the information requested, and details of the authority they believe hold the information (the initial authority must be confident that the alternative authority holds that information), or
- if the authority does not know who may hold the information requested, they will simply send you a refusal notice stating that they do not hold the information.

If the authority only holds **part** of the information, they must provide the information they do hold, **and** either:

- transfer the request to another authority which they are confident holds the remainder of the information (as a matter of good practice an authority should always ask for your consent prior to transferring your request), and send you a refusal notice stating which information they do not hold, or
- send you a refusal notice stating which information they do not hold, and if they know which authority holds the remainder of the information, details of that authority (the initial authority must be confident that the alternative authority holds the information), or
- if an authority does not know who may hold the remainder information, they will simply send you a refusal notice stating which information they do not hold.

10. If a public authority refuses my request or I am dissatisfied with the way in which it has dealt with it, how should I proceed?

You should apply to the authority's internal review/complaints procedure.

You may apply to an authority's internal review procedure if an authority:

- has refused information,
- states they do not hold the information requested,
- or any other aspect of the EIR which you feel an authority has not complied with e.g. if they have not supplied the information requested within 20 working days and have not provided justification for this, if you think the fee charged is unreasonable etc

If an authority does not hold part or all the information requested they must issue a refusal notice. A refusal notice **must** include:

- details of their review/complaints procedure in case you wish to appeal against their decision,
- details of your right to appeal to the Information Commissioner,
- details of the Commissioner's enforcement powers, and
- details of your right and the public authority's right to appeal to the information tribunal following the Commissioner's decision.

Under the EIR public authorities have a duty to have an internal review procedure. Therefore, should you believe that an authority holds information that they state they do not, your first action should be to apply for reconsideration through the authority's own internal review procedure. You must apply to a public authority in writing within 40 working days of receipt of the refusal notice.

11. What happens when I have applied to a public authority's internal review/complaints procedure?

Once an authority has received your complaint, as a matter of good practice they should send you an acknowledgment stating when they expect to respond in full. If the authority is not able to meet their expected response date (as stated in the acknowledgment) they should inform you of this, and explain the reasons for the delay. An authority must review a decision as soon as possible and in any case within 40 working days of receipt of the complaint. If, following the review, the decision is to release information previously withheld, the Commissioner expects public authorities to release the information as soon as possible, and at the latest within 40 working days of the decision.

The review should be carried out impartially by someone who was not party to the original decision, and who has the authority to reverse/amend the previous outcome where necessary.

An authority cannot charge for carrying out an internal review.

When a response is sent, as a matter of good practice the authority should repeat details of your right to appeal to the Commissioner.

12. I have applied to the public authority's internal review/complaints process but I am still unhappy with their response, how should I proceed?

You can make a complaint to the Commissioner in respect of an authority's handling of a request.

The Commissioner will normally only consider your application if you have already exhausted the original authority's internal review/complaints procedure.

You should apply to the Commissioner as soon as possible after receipt of the response from the original authority's internal complaints procedure. Where an authority has included details of your right to appeal to the Commissioner within this response, the Commissioner expects you normally to apply within 2 months of receipt.

To apply, you should write to the Commissioner at the following address:

EIR/FOI Complaints
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

General queries:
Tel. 01625 545 745
Fax 01625 525 510

The information you should include when applying to the Information Commissioner to review a public authority's handling of your request is:

- a covering letter explaining what you would like the Commissioner to assess,
- a copy of the initial request, if a verbal request was made, any details of the request which you recorded,
- a copy of the public authority's initial response (the 'Refusal Notice')
- a copy of the complaint you made to the public authority's internal review/complaints procedure,
- a copy of the public authority's response following reconsideration through the internal review/complaints procedure,
- any other information which you think is relevant,

- an indication of any particular urgency in your case (we cannot guarantee to respond to your request within a particular time but we will take such a request into account), and
- your own contact details to ensure we can quickly obtain any further information which is necessary.

Although you can apply to the Commissioner to review a public authority's handling of your request without including the above information within your initial application, the Commissioner will be able to deal with your case more quickly and efficiently if it is included at the outset.

13. What does the Commissioner do once a complaint has been made?

An acknowledgement will be issued on receipt of a complaint.

Depending on the type of issue the complaint addresses, the Commissioner may take different actions. Provided that prior to applying to the Commissioner,

- you have exhausted the internal complaints procedure of the public authority, and
- there has not been unnecessary delay before applying (i.e. not longer than 2 months from receipt of the public authority's internal review response),

the Commissioner will deal with your complaint unless the application is frivolous/vexatious.

The Commissioner will aim to send an initial response within 28 days of receipt of the complaint. The response will outline what steps will be taken and also when he expects to send further written correspondence.

Wherever possible, the Commissioner will explore the scope for an informal settlement of the complaint which would be acceptable to the complainant and to the public authority. Where such a settlement can be achieved - for example through disclosure of part of the requested information - he will invite the complainant to withdraw the complaint.

In certain circumstances and/or where it is not possible to deal with a complaint informally, the Commissioner will issue a decision notice.

Where a decision notice is issued it is sent to both yourself and the public authority in question. The decision notice will state the Commissioner's final assessment as to whether or not the authority has complied with the EIR. If the decision is to disclose information previously withheld, the notice will specify steps to be taken by the public authority, and a period of time in which to comply with this decision. The decision notice will also state your right, and the public authority's right to appeal to the information tribunal should they disagree with the decision.

14. If I disagree with the Commissioner's decision, how should I proceed?

Should either you or the public authority disagree with the Commissioner's final decision, each has the right to appeal to the information tribunal. When the Commissioner issues his final decision, details of your right of appeal and details of the information tribunal will be included within the response.

15. What happens if a public authority does not appeal, but does not comply with the Commissioner's decision?

If you do not receive the information (as stated in the decision notice issued by the Commissioner), you can contact him and further action can be taken.

An authority can be found in contempt of court if they do not comply, this could result in an unlimited fine or imprisonment.