

Basic guide on compliance for first tier councils

Freedom of Information Act 2000 (FOIA) Environmental Information Regulations 2004 (EIR)

Introduction

1. This brief guide to the FOIA and EIR is to provide an outline for parish, town and community councils of the requirements of these laws.
2. Its purpose is draw to your attention your responsibilities.

General

1. The FOIA and EIR apply to all public authorities including all first tier councils.
2. The EIR applies to environmental information and the FOIA to all other information held by a public authority.
3. It does not matter what the source or origins of the information is, if it is held in any recorded form by a public authority it is subject to the legislation.
4. The legislation introduces a presumption in favour of access to information.
5. Information need not be supplied if exempt under FOIA or covered by an exception in the EIR. Reasons for refusing information must be in accordance with the respective provisions of the legislation, including consideration of the public interest test where this applies.
6. You are required to provide reasonable advice and assistance to applicants for information.


Publication scheme

1. All public authorities must have a publication scheme approved by the Information Commissioner's Office (ICO).
2. A publication scheme indicates the information that will be provided as part of the normal business activities of the authority and how it will be provided.
3. If you have good and justifiable reasons for charging for information covered by your publication scheme, you must include a reference to the charge in it.

Requests for information

1. If you receive any written request for information, giving a name and address for correspondence, you must consider it as a request made under the FOIA.
2. For environmental information a request does not have to be in writing.
3. Some correspondence including requests for information should continue to be dealt with as normal business, but only if you are sure that this is the intention of the correspondent.
4. Where a request for information is received you must send a response within 20 working days. That response must be either the provision of the information or a refusal notice drawn up in accordance with the provisions of the legislation.
5. For environmental information the response period is extended to 40 working days for information that is complex and bulky.



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6. For other information further time is allowed – we recommend a maximum of another 20 days – where an exemption has been applied that requires further consideration of the public interest test. You still must send an initial response within the 20 days.

Fees

1. In responding to requests for environmental information you are allowed to request payment of reasonable fees. What is reasonable should be considered in light of the restrictions imposed on charging fees for other information and any guidance that is issued.
2. For the provision of other information, in most circumstances you can only request repayment of actual disbursements. Staff time cannot be included as a disbursement even if referred to as “administration” or “handling” charges.
3. If fees are to be charged for the provision of information in a publication scheme you must obtain approval from the Information Commissioner's Office that a fee will be charged.
4. You can refuse an application for information that is not environmental information if the cost of extracting it exceeds the cost limit. The cost limit equates roughly to 18 hours work.
5. You cannot refuse environmental information on the grounds of cost.

Internal review

1. If any applicant for information is dissatisfied with the way you have handled their request they may request you to carry out a review of what you have done or have failed to do.
2. Under the EIR you must have a procedure for handling reviews.
3. Under FOIA it is not a legal requirement but the Code of Practice expects you to have one.
4. The complaint can be in relation to your refusal of information or failure to respond within time or your failure to provide advice or assistance.

Codes of practice

1. The Lord Chancellor has issued a Code of Practice for handling requests for information. You need to read it: www.dca.gov.uk/foi/reference/impref/codepafunc.htm
2. The Secretary of State for the Environment has issued a similar Code of Practice about access to environmental information: www.defra.gov.uk/corporate/opengov/eir/pdf/cop-eir.pdf

Complaints to the ICO

1. Those requesting information who are dissatisfied with the response to their request can complain to us after exhausting the internal review process.
2. We will notify you straight away when a complaint has been received.
3. It will assist in handling a complaint if you can let us know who to contact about it and when they are available.
4. To carry out the investigation of a complaint properly we need your full co-operation.
5. Please respond fully and promptly to any correspondence from us when we investigate a complaint.
6. It will also assist if you provide any relevant background information about the circumstances surrounding the request.

Further advice and assistance

Helpline: 08456 306060 or 01625 545745

Website: www.ico.gov.uk

Email: via website enquiries

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF