

# The Guide to the Environmental Information Regulations

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# About the guide

## About the Guide to the Environmental Information Regulations

This guide is for those who work for a public authority and have day-to-day responsibility for environmental information.

It explains how to apply the Act by giving practical examples and answering frequently asked questions.

# What are the EIR?

## In brief...

The Environmental Information Regulations 2004 provide public access to environmental information held by public authorities.

The Regulations do this in two ways:

- public authorities must make environmental information available proactively;
- members of the public are entitled to request environmental information from public authorities.

The Regulations cover any recorded information held by public authorities in England, Wales and Northern Ireland. Environmental information held by Scottish public authorities is covered by the Environmental Information (Scotland) Regulations 2004.

Public authorities include government departments, local authorities, the NHS, police forces and universities. The Regulations also cover some other bodies that do public work that affects the environment. For simplicity, all organisations subject to the Regulations are referred to as 'public authorities' in this guide.

The Regulations apply only to the environmental information held by public authorities. The Freedom of Information Act gives people access to most other types of information held by public authorities.

The Regulations and the Freedom of Information Act do not give people access to their own personal data (information about themselves), such as their health records or credit reference files. Individuals have a right of access to information held about them under the Data Protection Act 1998.

## In more detail...

- [What are the Environmental Information Regulations \(EIR\) for?](#)
- [What are the main principles behind the Environmental Information Regulations?](#)
- [Are we covered by the Regulations?](#)
- [When is information covered by the Regulations?](#)
- [Is the information 'environmental information'?](#)
- [Who can make a request for information under the Regulations?](#)
- [What are our obligations under the Regulations?](#)
- [What do we need to tell people about the Regulations?](#)
- [How does the Regulations affect data protection?](#)
- [How does the Regulations relate to the Freedom of Information Act?](#)
- [How does the Regulations affect copyright, database rights and intellectual property?](#)
- [What other laws to we need to take into account when applying the Regulations?](#)

## What are the Environmental Information Regulations for?

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The Regulations are derived from European law. They implement the European Council Directive 2003/4/CE on public access to environmental information (the EC Directive) in the UK. The principle behind the law is that giving the public access to environmental information will encourage greater awareness of issues that affect the environment. Greater awareness helps increase public participation in decision-making; it makes public bodies more accountable and transparent and it builds public confidence and trust in them.

The source of the EC Directive is an international agreement called the 'Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters'. It was adopted in Aarhus, Denmark on 25 June 1998 and is known as 'the Aarhus Convention'. Part of the Aarhus Convention says what its signatories must do to provide access to environmental information. The European Union and the United Kingdom have signed the Convention.

Article 1 of the Aarhus Convention states:

"In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each party shall guarantee the rights of access to information, public participation in decision-making, and access to justice on environmental matters in accordance with the provisions of this Convention."

## What are the main principles behind the Environmental Information Regulations?

The Regulations give people a right of access to information about the activities of public authorities that relate to or affect the environment, unless there is good reason for them not to have the information. This is sometimes referred to as a presumption in favour of disclosure.

This means that:

- everybody has a right to access environmental information. Disclosure of information should be the default – in other words, information should be kept private only when there is a good reason and the Regulations allow it;
- an applicant (requester) does not need to give a reason for wanting the information. On the contrary, you must justify refusing them information;
- you must treat all requests for information equally;
- you should treat any information you release under the Regulations as if it were being released to the world at large.

This does not prevent you voluntarily giving information to people outside the provisions of the Regulations.

## Are we covered by the Environmental Information Regulations?

The Regulations cover public authorities as defined by the Freedom of Information Act, in England, Northern Ireland and Wales. The public authorities listed in [Schedule 1](#) of the Act are subject to the Regulations. Some public authorities are listed as subject to the Act only for specific types of information

– these include the BBC, House of Commons, House of Lords and the Bank of England. As with the Act, the Regulations do not cover individual MPs, assembly members and councillors. If your organisation is not subject to the Regulations because it is listed in Schedule 1 only in relation to certain information, then you should handle any requests for environmental information under the Freedom of Information Act.

The Regulations also cover organisations that carry out ‘functions of public administration’; these functions do not have to relate to the environment – these could include private companies or public private partnerships. Bodies that are under the control of public authorities may also be included if they carry out functions that relate to the environment.

The way an organisation works or the way it controls information may change over time, so it is impossible to produce a complete list of bodies covered by the Regulations. If you are not listed under Schedule 1 of the Act, you must decide whether you are a public authority covered by the Regulations, based on your functions.

For more information, read our more detailed guidance:

 [Public authorities under the EIR](#) 

For organisations  
PDF (64.98K)

## When is information covered by the Environmental Information Regulations?

The Regulations will cover any recorded information you hold that falls within the definition of ‘environmental information’. It is not limited to official documents or information you create – it can cover, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings.

Unlike the Freedom of Information Act, the Regulations do not explicitly exclude information that you hold solely on behalf of another person or body. The Regulations say that any information that is in your possession that you have produced or received is considered to be ‘held’.

However, our view is that information is in your possession only if you hold it to any extent for your own purposes. For the purposes of the Regulations, information you merely store for someone else would not be considered as being held, for example, information stored on a work computer or email account solely on behalf of a trade union or an MP or councillor. Similarly, we would not consider information a member of the staff produces for their own personal use to be produced or received by you, even if it is on your organisation’s premises or computer systems. For example, if a member of staff uses the public authority’s email system to send a personal, non-work related email, it will not be considered as held for the purposes of the Regulations.


For the purposes of the Regulations, you are still considered to hold environmental information that another person holds on your behalf. For example, where you subcontract public services to an external company, that company may then hold environmental information on your behalf, depending on the type of information and your contract with them. If you receive an information request, some of the information the external company holds may be covered by the Regulations. The company does not have to answer any requests for information it receives, but it would be good practice for them to forward the requests to you. The same applies where you receive services under a contract, for example, if you consult external solicitors.

When work related emails are sent using private email accounts and this results in official information being stored on private non-work email accounts, this information will be held for the purposes of the Regulations.

The Regulations do not cover information that is in someone's head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find out the answer to a question.

The Freedom of Information Act includes some specific requirements to do with datasets. For the purposes of the Act, a dataset is collection of factual, raw data that you gather as part of providing services and delivering your functions as a public authority, and that you hold in electronic form. The Regulations do not contain any specific provisions about datasets. However, this Guide explains when the dataset requirements of the Act are relevant to environmental information.

For further information, read our more detailed guidance:

 [Information held by a public authority for the purposes of the Environmental Information Regulations](#) 

For organisations  
PDF (257.66K)

 [Official information held in private email accounts](#) 

For organisations  
PDF (167.27K)

 [Datasets](#) 

For organisations  
PDF (350.51K)

 [The right to recorded information and requests for documents](#) 

For organisations  
PDF (301.66K)

 [Outsourcing and freedom of information](#) 

For organisations  
PDF (347.69K)

## Is the information 'environmental information'?

Usually, it will be obvious when requested information is environmental – for example, information about land development, pollution levels, energy production, and waste management.

However, sometimes information may seem like environmental information but it does not fall under the definition of 'environmental information'. For example, information about how the population levels of a particular species of bird affect the population levels of a species of insect will be environmental information, because it is information on the balance between species or 'biological diversity and its components'. However, although information about the living conditions of domestic animals may seem similar, it won't qualify as information on 'biological diversity and its components' because it doesn't say how those living conditions affect the balance between species.

Similarly, sometimes information might not seem to be obviously environmental but could still fall under the definition. For example, financial information would be classed as environmental information if it related to the costs of redeveloping land and building a new leisure complex.

For this reason it is important to refer to the full definition of environmental information provided at regulation 2(1) before making a final decision on whether information is environmental or not and which legislation applies.

For further information, read our more detailed guidance:

 [What is environmental information? !\[\]\(ce455c990c00145a2dda1d9a310cb682\_img.jpg\)](#)

For organisations  
PDF (92.54K)

## Who can make a request for information under the Environmental Information Regulations?

Anyone can make a request for information under the Regulations. Requests are often made by people concerned about local issues, journalists, researchers, scientists, lawyers on behalf of clients, MPs, campaign groups, or companies. Requesters should direct their requests to the public authority they think will hold the information.

For further information, read our more detailed guidance:

 [Consideration of requests without reference to the identity of the applicant or the reasons for the request !\[\]\(e0595260a7e7840628d1fda6c7638537\_img.jpg\)](#)

For organisations  
PDF (307.8K)

## What are our obligations under the Environmental Information Regulations?

You have two main obligations under the Regulations. You must:

- make environmental information available proactively, using easily accessible electronic means whenever possible; and
- respond to requests for environmental information.

In addition to these legal obligations, there are two codes of practice that recommend good practice for complying with the Regulations.

The [code of practice on the discharge of the obligations of public authorities under EIR !\[\]\(e3f255517d37bb309a3a931ec4849e6a\_img.jpg\)](#) (the EIR code of practice) sets out good practice recommendations for you to follow in meeting your obligations under the Regulations. It sets out the situations when you should give advice and assistance to requesters, guidelines on making information available proactively, and considerations that may affect your relationships with other public bodies or third parties.

The [section 46 code of practice !\[\]\(2b17f17ebbacc911bb0ff784ab641779\_img.jpg\)](#) covers good records management practice and the obligations of public authorities under the Public Records Act. This is relevant to the Environmental Information



Regulations and the Freedom of Information Act.

These codes of practice are not directly legally binding, but failure to follow them may be relevant when deciding whether an organisation has complied with the Regulations. For example, if you follow the steps set out under part III of the EIR code of practice about advice and assistance, it is likely that you will comply with your obligations under Regulation 9.



For further information, read our more detailed guidance:

 [Section 46 Code of practice – records management](#) 

For organisations  
PDF (344.16K)

 [Regulation 9 – Advice and Assistance](#) 

For organisations  
PDF (280.88K)

 [Regulation 16 Code of Practice – Discharge of obligations of public authorities under the EIR](#) 

For organisations  
PDF (286.89K)

## What do we need to tell people about the Environmental Information Regulations?

Publicly available information is only valuable if people know they can access it and know what is available. You should:

- publicise your commitment to proactive publication and the details of what is available;
- publicise the fact that people can make requests for information to you;
- provide contact details for making a request, including a named contact and telephone number for any enquiries about requesting information.

You should also make your staff, contractors or others you have contact with aware of how the Regulations may affect them. You should make clear that you cannot guarantee complete confidentiality of information, and that as a public body you must consider releasing any environmental information you hold if it is requested.

## How do the Environmental Information Regulations affect data protection?

The Data Protection Act gives rules for handling information about living, identifiable people. It includes the right for people to access their own personal data.

The Information Commissioner's Office regulates the Freedom of Information Act, the Data Protection Act and the Environmental Information Regulations.


The Environmental Information Regulations don't provide a right of access to a person's own information. If someone makes a request for their own personal information, you should deal with it under the Data Protection Act. A request for an individual's own personal data is called a 'subject access

request’.

The Data Protection Act protects people’s right to privacy and ensures that personal data is processed with care and only when necessary. The Environmental Information Regulations on the other hand are about openness and transparency in environmental matters. These two aims are not necessarily incompatible, but there can be a tension between them, and applying them sometimes requires careful judgement.

When someone makes a request for information that includes someone else’s personal data, you will need to carefully balance the case for transparency and openness under the Environmental Information Regulations against the data subject’s right to privacy under the Data Protection Act in deciding whether you can release the information without breaching the data protection principles.

See [When can we refuse a request for environmental information?](#) and our more detailed guidance:

 [Guide to data protection](#)  
For organisations

## How do the Environmental Information Regulations relate to the Freedom of Information Act?

The Regulations provide a separate right of access to information about the environment. All other types of information are covered by the Freedom of Information Act. When you receive a request, you need to consider whether the information that has been asked for is environmental or not, and then deal with the request under the appropriate legislation.

There are similarities between the two regimes for accessing information, but there are some important differences. It is essential that you deal with requests under the correct regime.

However, if you are subject to the Freedom of Information Act but not the Environmental Information Regulations, you should handle all requests under the Freedom of Information Act. See [Are we covered by the Environmental Information Regulations?](#) for more detail.

For further information, read:

 [Guide to freedom of information](#)  
For organisations

## How do the Environmental Information Regulations affect copyright, database rights and intellectual property?

Access to environmental information under the Regulations does not affect any copyright, database rights or intellectual property rights that give owners the right to protect their original work against commercial exploitation by others.

If someone wishes to re-use public sector information for commercial purposes, they should make an application under the Re-use of Public Sector Information Regulations. See the [Public Sector Information FAQs](#) from the National Archives for more information on this. The ICO does not have any powers to

regulate copyright or the re-use of information.

When giving access to information under the Regulations, you cannot place any conditions or restrictions on that access. For example, you cannot require the requester to sign any agreement before they are given access to the information. However, you can include a copyright notice with the information you disclose. You can also make a claim in the courts if the requester or someone else uses the information in breach of copyright. The ICO encourages public authorities to use the [open government licence](#) provided by the National Archives.

Generally, copyright, database rights and intellectual property rights should not prevent a public authority disclosing information under the Regulations. However, the Regulations differ from the Freedom of Information Act in that they include an exception to disclosure where releasing information would adversely affect intellectual property rights (regulation 12(5)(c)) – for further information see [When can we refuse a request for environmental information?](#)

## What other laws do we need to take into account when applying the Environmental Information Regulations?

As well as the Freedom of Information Act 2000 and the Data Protection Act 1998, the Regulations interact with the Infrastructure for Spatial Information in the European Community Regulations 2009 (INSPIRE), which came into force on 31 December 2009.

The duty under INSPIRE to make spatial data sets (sets of data linked to geographical locations) publicly available in a consistent and useable electronic format, overlaps with the duty under the Environmental Information Regulations to make environmental information available proactively using easily accessible electronic means. However, not all information covered by INSPIRE will be environmental information, and lots of environmental information will not qualify as a spatial data set.

If you work in a local authority, you will need to be aware of the relationship between the Environmental Information Regulations and the Local Authorities (England) (Charges for Property Searches) Regulations 2008 ('the CPSR'). The CPSR provide a framework that permits local authorities to charge for property-search services. However, the charging provisions of the CPSR do not apply where a local authority:

- can charge for access to property records; or
- has to provide access free of charge under another enactment.

Much of the information local authorities provide in response to property-search enquiries is likely to fall under the definition of environmental information, so it will be subject to the charging provisions in the Environmental Information Regulations rather than the CPSR. The Environmental Information Regulations give a public authority the discretion to charge a reasonable fee for making environmental information available, and set out the circumstances under which it cannot charge.

If you are a public sector body as defined by the Re-use of Public Sector Information Regulations 2015 (RPSI) then most of the information you hold as part of your public task must be made available for re-use on request. Most, but not all public authorities are public sector bodies under RPSI, though libraries, museums and archives have discretion as to whether to permit re-use. RPSI applies to information in which you as the public sector body hold the intellectual property rights but does not generally apply to information that is exempt from disclosure under the Environmental Information Regulations or the Freedom of Information Act.

For further information, read our more detailed guidance:

 [The INSPIRE regulations 2009 – an overview of the role of the Information Commissioner](#)  
For organisations

 [Guide to RPSI](#)  
For organisations

 [Property searches and the EIR !\[\]\(b89ecf30df3dbaee65fa9f1829524a6e\_img.jpg\)](#)  
For organisations  
PDF (55.39K)

# Publication schemes

## In brief...

One of your obligations under the Environmental Information Regulations is to publish environmental information proactively. The Regulations require you to do this in the following two ways:

- you should publish information by easily accessible electronic means; and
- you should organise your records in such a way that you can publish certain information routinely.

These obligations are separate from your duty to make information available in response to individual requests.

You don't have to publish all the environmental information you hold. The minimum you should routinely publish to comply with your obligations under the Regulations is listed in Article 7(2) of the European Directive 2003/4/EC. It includes things like policies, plans and procedures relating to the environment, reports on the state of the environment, and environmental impact studies. It also includes data taken from monitoring activities and risk assessments that affect or are likely to affect the environment.

The Regulations, unlike the Freedom of Information Act, do not require you to set up a specific process to comply with your obligation to publish environmental information. Under the Act, you have a duty to maintain a publication scheme, which must set out your commitment to make certain classes of information routinely available, such as policies and procedures, minutes of meetings, annual reports and financial information. The Regulations do not require you to maintain a publication scheme, but we recommend you do so to help you comply with the requirement to publish environmental information proactively.

If you use your publication scheme to proactively publish environmental information, you should at least publish the information that falls within specific classes as set out in the ICO 'model publication scheme'. You do not need to treat environmental information as a separate class of information. You do not have to publish information that you would otherwise refuse to disclose using one of the exceptions available under the Regulations.

Most public authorities make their publication scheme available on their website under 'freedom of information', 'guide to information' or 'publication scheme'. If you receive a request for any information in your scheme, you should be able to give it out quickly and easily. You should make your staff aware of the information available through your publication scheme.

For further information, read:

 [The Guide to freedom of information: what information do we need to publish?](#)

For organisations

 [Proactive dissemination: routinely publishing environmental information](#) 

For organisations  
PDF (228.2K)

## In more detail

- [What are our obligations to publish environmental information proactively?](#)
- [What kind of information do we need to publish routinely?](#)
- [How can we comply with our obligations to publish information proactively?](#)
- [How should information be made available?](#)
- [How should we organise information for disclosure?](#)
- [Can we refuse to publish information?](#)
- [Why must we publish information, rather than simply respond to requests?](#)
- [We are not subject to the FOI Act – do we need to publish environmental information?](#)
- [Can we charge for access to information?](#)

## What are our obligations to publish information proactively under the Environmental Information Regulations?

The Regulations require you to:

- progressively make information available by easily accessible electronic means; and
- take reasonable steps to organise information relevant to your functions to enable you to publish it proactively and systematically.

This is separate from your duty to make information available in response to individual requests.

You do not have to make available or organise information electronically if it was created or collected in a non-electronic form before 1 January 2005. Also, you don't have to make information available that you would normally refuse to disclose because it is subject to an exception in regulation 12.

## What kind of environmental information do we need to publish routinely?

The minimum information you must routinely publish is listed in Article 7(2) of the European Directive 2003/4/EC. This includes policies, plans and procedures relating to the environment, reports on the state of the environment, environmental impact studies and data taken from monitoring activities and risk assessments that affect or are likely to affect the environment. This may cover public registers of environmental information you maintain under another piece of legislation, your organisation's carbon emissions data, or details about external renovation and building work. You must also publish facts and analyses of facts that are relevant and important to major environmental policy proposals.

## How can we comply with our obligations to publish information proactively under the Environmental Information Regulations?

The Regulations require you to proactively publish environmental information electronically, and organise information in a systematic way. However, unlike the Freedom of Information Act, they do not set out rules for how you should meet these obligations.


The Act says you must have a publication scheme that commits you to making certain categories of information available to the public as part of your normal business activities. The Regulations do not require you to operate a publication scheme for environmental information, but we recommend you do

so to help you comply with your duty to proactively publish environmental information, and for convenience and consistency.

A publication scheme's 'guide to information' is a way of providing quick and easy access to your most important information – the information your customers and service users want to know. There is no reason why it can't include the types of environmental information that you have a duty to publish routinely.


The ICO has produced a range of [definition documents](#) that should help you decide what information (environmental and non-environmental) you need to publish through your guide to information as part of your scheme. The publication scheme only covers information you already hold, so if you don't hold any of the information specified in the classes of information, you don't have to create it.

For more information, read:

 [The Guide to freedom of information: what information do we need to publish?](#)  
For organisations

## How should environmental information be made available?


The Regulations say you should progressively make information available to the public by easily accessible electronic means. We recommend that, where possible, you use your organisation's website to publish information proactively. You should organise the information so that it is easy to find and searchable. You should update and add information as it is created. You need not make available or organise information electronically if it was collected in a non-electronic form before 1 January 2005.

If you are asked for information that is already available online, you can simply provide a link to it. For example, you could list relevant legislation with links to the text on the website [www.legislation.gov.uk](http://www.legislation.gov.uk) 

The Regulations do not require you to provide a hard-copy version on request if the information is publicly available and easily accessible to the requester in electronic form. However, you should consider providing a hard-copy version if the individual cannot access the electronic version.

You should also be aware of any obligations you have under equality legislation, for example, to make reasonable adjustments for those with disabilities.

## How should we organise environmental information for disclosure?

The Regulations say you must take reasonable steps to organise environmental information to enable you to make it available to the public. What is 'reasonable' depends on your organisation's size and functions and the nature of the information held. We recommend you consider how you organise your information as part of your wider records-management processes. Please read the [Section 46 Code of Practice](#)  for guidance on good practice in records management.

## Can we refuse to publish environmental information?

You should list any information you hold that falls within the classes set out in Article 7(2) of the European Directive 2003/4/EC or your publication scheme in your guide to information (or both), unless:

- you have archived it and it is difficult to access;
- one of the exceptions in regulation 12 applies (including if you don't hold the information);
- it is personal information and subject to regulation 13;
- part of the document is exempt from disclosure and it would not be practical to publish the information in a redacted (edited) form. We would normally expect you to publish redacted minutes of meetings, but we accept it is unreasonable to expect you to routinely produce edited versions of other documents.

When you have decided not to publish information, it is good practice to record your reasons for this decision, in case you are questioned about this later.

## Why must we publish environmental information, rather than simply respond to requests?

The Regulations require you to proactively publish information. Information rights legislation is designed to increase transparency. Members of the public should be able to routinely access information that is in the public interest and is safe to disclose.

The European Directive 2003/4/EC, which the Regulations are based on, specifies a minimum amount of information you should give out routinely. People should be able to access this information directly on the web, or receive it promptly and automatically whenever they ask.

## We are not subject to the Freedom of Information Act – do we need to publish environmental information proactively under the Environmental Information Regulations?

Organisations that are subject to the Regulations but not to the Freedom of Information Act must publish information proactively only if it falls within the definition of environmental information. They do not need to maintain the model publication scheme or written guide to information required by the Freedom of Information Act.

If your organisation is subject to the Regulations alone, you will still need to identify any information you hold that is environmental and decide what you need to publish routinely. You must ensure published information is available in a systematic way, and update and add to it as necessary. It is good practice to have a process for doing this

For more information, read the following sections of the Guide to freedom of information:

 [What information do we need to publish?](#)

For organisations

 [Definition documents and template guides to information](#)

For organisations

## Can we charge for access to environmental information?



The Regulations say you can charge for making information available to a requester in some circumstances. You must publish a list of charges you intend to make for environmental information, whether proactively published or released in response to a request. This should explain the circumstances in which you will make a charge and how you will calculate it.

If you provide information in hard copy, you can make a reasonable charge to cover the cost. In general, a reasonable charge may include the disbursement costs in transferring the information to the applicant and the staff time taken to locate the information. This is in contrast to the Freedom of Information Act (FOIA) where disbursements are the only charges permitted unless the appropriate cost limit is exceeded.

Under the Regulations, you cannot charge a requester for:

- access to public registers; or
- lists of environmental information; or
- access to examine information at the place you make it available (although you can make a reasonable charge for staff time needed to prepare information for inspection).

It is normally good practice for public authorities not to charge for access to information published online.

For more information, read our more detailed guidance:

 [Charging for environmental information](#) 

For organisations  
PDF (75.29K)

# Receiving a request

## In brief...

Anyone has a right to request environmental information from a public authority. An individual does not have to mention the Environmental Information Regulations when making a request and the request does not have to be directed to a specific member of staff. Under the Regulations, requests can be made verbally or in writing.

When you receive a request for information, you should consider whether the requested information is environmental and should be dealt with under the Regulations. In most cases this will be fairly clear. If the requested information is not environmental, you will need to deal with it under the Freedom of Information Act. You should also consider whether the information is the requester's personal data – if so, you will need to deal with it under the Data Protection Act as a 'subject access request'. For guidance on dealing with requests under the Act, see the section [What should we do when we receive a request?](#) in the Guide to Freedom of Information.

We recommend you provide clear contact details for the person in your organisation who deals with requests for information, but you cannot ignore or refuse a request if it is not addressed to the relevant person.

The Regulations say that when you receive a request, you should:

- always respond in writing, regardless of whether the request was made verbally or in writing;
- tell the requester whether you hold any information; and
- make that information available, unless an exception applies.

You normally have 20 working days to respond to a request.

This doesn't mean you have to treat every enquiry formally as a request under the Regulations. It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry under your usual customer service procedures. For example, if a householder wants to know the refuse collection dates for their property, it could be dealt with as a 'normal course of business' enquiry – you could tell them there and then, or send them a copy of the relevant leaflet. The legal requirements under the Regulations may come into force if:

- you cannot provide the requested information straight away; or
- the requester makes it clear they expect a response under the legislation.

## In more detail

- [What are the requirements for a request under the Regulations?](#)
- [When should we deal with a request for information?](#)
- [What should we do when we receive a request?](#)
- [What if we are unsure what's being asked for?](#)
- [How long do we have to respond to a request?](#)


- [It will take us a long time to find the information. Do we still have to deal with the request?](#)
- [Can a question be a valid request?](#)
- [Should Parliamentary Questions be treated as requests for information under the EIR?](#)
- [What happens if we don't have the information?](#)
- [Do we have to tell them what information we have?](#)
- [In what form or format should we give the information?](#)
- [Do we always have to release the information?](#)
- [Can we change or delete information?](#)
- [Do the Regulations allow us to disclose information to a specific person or group alone?](#)
- [Can we charge for the information?](#)

## What are the requirements for a request under the Environmental Information Regulations?

Anyone can make a request for information, including members of the public, journalists, researchers, scientists, lawyers, businesses, campaign groups and MPs. An information request can also be made to any part of a public authority. You may have a designated information requests team to whom the public can make their requests. However, members of the public will often address their requests to staff they already have contact with, or who seem to know most about the subject of their request.

When you receive a request, you have a legal responsibility to identify that a request has been made and handle it accordingly. So staff who receive customer correspondence should be particularly alert to identifying potential requests.

You should also be aware of other legislation covering access to information, including the Data Protection Act 1998, the Freedom of Information Act 2000, the INSPIRE (Infrastructure for Spatial Information in the European Community) Regulations 2009, and sector specific legislation that may apply to your authority, such as Local Government Acts.

The Regulations do not specify how a valid request must be made. Requests can be made verbally or in writing, so a request could be made by telephone, letter or email, or using social media sites such as Facebook or Twitter. It is good practice to have a policy for recording details of the requests you receive, particularly those made by telephone or in person. You may wish to check with the requester that you have understood what information they want; this can help avoid later disputes about how you have interpreted the request. We also recommend that you keep a log of verbal requests. Our [verbal request log](#)  sheet shows the details you should record in these cases.

As the Regulations say you must respond to all requests in writing, you will need to ask the requester for a name and contact details for correspondence. In contrast to the Freedom of Information Act, a request is still valid if the requester doesn't use their real name.

A request does not have to specify or describe the information. Any clear sign that someone wants some environmental information is likely to count as a request under the Regulations, even if you can't tell exactly what information they want. However, there are other provisions to help you deal with requests which are too broad, unclear or unreasonable. See [When can we refuse a request for environmental information?](#) for more information.

For more information, read our detailed guidance:

 [Guidance on circular \(or round robin\) requests](#) 

For organisations  
PDF (110.91K)

## When should we deal with a request for information under the Environmental Information Regulations?

You can deal with many requests by providing the requested information in the normal course of business. If the information is included in your publication scheme, you should give this out automatically, or provide a link to where the information can be accessed.

If you can't provide the information in the normal course of business, or if the requester insists on a formal response, then you should first consider the nature of the information requested to decide which legislation or access regime applies.

If someone is asking for their own personal data, you should deal with this as a 'subject access request' under the Data Protection Act.

For more information, read our more detailed guidance:

- [Subject access requests - how do I respond?](#)

If the request is for environmental information, then you will need to deal with it under the Regulations. It won't always be obvious from reading the request that it's for environmental information, so you may need to read at least a sample of the information requested before deciding.

If the requested information is not environmental information, then you should deal with the request under the Freedom of Information Act.

For more detail, read:

 [The Guide to Freedom of Information: What should we do when we receive a request?](#)

For organisations

## What should we do when we receive a request?

Read the request carefully to make sure you know what is being asked for and that the information described in the request is environmental. Always consider contacting the applicant to check that you have understood their request correctly.

You should read a request objectively. Do not get diverted by the tone of the language the requester has used, your previous experience of them (unless they explicitly refer you to this) or what you think they would be most interested in.

## What if we are unsure what's being asked for?

Requests are often ambiguous, with many potential interpretations or no clear meaning at all. Under regulation 12(4)(c) of the Regulations, you can refuse to answer a request that is too general, provided you have gone back to the requester and asked for extra information, offering them advice and assistance to help to explain, clarify or rephrase their request. This might involve explaining the options available to them, and asking whether any of the suggested options would answer their request.

You have 20 working days to go back to the requester for further information. If you do this, you don't have to respond until the requester clarifies their request – you then have 20 working days to respond to the rephrased request.

### Example

"You have asked for minutes of all the planning department's meetings attended by Mr John Smith and the planning documents concerning the Quays development from June, July or August this year.

This could mean:

- a) minutes of all planning department meetings John Smith has ever attended; plus the planning documents concerning the Quays development drafted in July, July or August;
- b) minutes of all planning department meetings John Smith attended in June, July or August; plus the planning documents concerning the Quays development drafted in June, July or August;
- c) minutes of all planning department meetings John Smith ever attended concerning the Quays development; plus the planning documents concerning the Quays development drafted in June, July or August; or
- d) minutes of all planning department meetings John Smith attended concerning the Quays development in June, July or August; plus the planning documents concerning the Quays development drafted in June, July or August.

Please let us know which documents you are interested in."

For more information, read our more detailed guidance:

 [When can we refuse a request for environmental information?](#)

For organisations

 [Interpreting and clarifying requests](#) 

For organisations  
PDF (285.68K)

 [Regulation 9 - Advice and Assistance](#) 

For organisations  
PDF (280.88K)

## How long do we have to respond to a request?

The Regulations say you have to make information available as soon as possible, and no later than 20 working days. You should count the first working day after you receive the request as the first day. You shouldn't wait until the twentieth day to respond to a request – your main obligation is to provide the information as soon as possible after you receive the request.

Working day means any day other than a Saturday, Sunday, or public holidays and bank holidays; this may or may not be the same as the days you are open for business or staff are in work.

The time allowed for complying with a request starts when your organisation receives it, not when it reaches the information officer or other relevant member of staff.

For more information, read our more detailed guidance:

 [Time limits for compliance under the EIR](#) 

For organisations  
PDF (323.29K)

## It will take us a long time to find the information. Do we still have to deal with the request?

Sometimes a requester will ask for a lot of complex information, which makes it more difficult for you to decide whether to release it. In these exceptional circumstances, the Regulations permit you to extend the 20 working day limit to 40 working days to give you more time to answer the request. You will still need to notify the requester that you are extending the time for compliance as soon as possible, and no later than 20 working days after the date you receive the request.

In some cases, if finding the information and drawing it together to answer the request would be an unreasonable burden on your resources, you may be able to refuse the request under regulation 12(4)(b) (manifestly unreasonable). In these cases you will still have to write to the requester and explain this, and where possible tell them if you hold the information.

See [When can we refuse a request for environmental information?](#) for more details.

## Can a question be a valid request?

You will often be asked 'how', 'why' and 'if' questions about the work you do. Such questions will be valid requests for information under the Regulations.

### Example

"Why have you approved the building work at the Town Hall?"

"Can you forward me all the information you have about the recent planning application for the Town Hall?"

"I would like to request information relating to your approval of the recent planning application for

changes to the Town Hall.”

These are all valid requests for information about the reasons for the decision.

If you hold recorded information that answers the question, you should provide it in response to the request. You do not have to provide information if you do not already hold it in recorded form.

We recognise that you may initially respond to questions informally, but we will expect you to consider your obligations under the Regulations as soon as it becomes clear that the requester is dissatisfied with this approach.

Ultimately, if there is a complaint to the ICO, the Commissioner will make her decision based on whether recorded information is held and has been provided.

Even though the Regulations require you to provide recorded information, this doesn't stop you providing answers or explanations as well, as a matter of normal customer service.

## Should Parliamentary Questions be treated as requests for information under the EIR?

Parliamentary Questions (PQs) are part of parliamentary proceedings and must not be treated as requests for information under the EIR (or under FOIA); to do so would infringe parliamentary privilege.

For more information on what parliamentary privilege read:

 [Parliamentary privilege guidance \(section 34\)](#) 


For organisations  
PDF (290.24K)

## What happens if we don't have the information?

If you don't have the information the requester has asked for, regulation 12(4)(a) says you must issue a formal refusal notice telling them that you do not have the information. See [When can we refuse a request for environmental information?](#) for more details.

When compiling a response to a request for information, you may have to draw from multiple sources of information you hold. However, if you don't already have the relevant information in recorded form you don't have to create an answer or find out information from elsewhere.


If the requester has asked a question and you don't hold recorded information but can answer it, it may be good customer service to answer that question. However, the Regulations do not require you to do this.

If you don't hold information that answers a request, but you know that the information is held by another public authority, you should transfer the request to them, or advise the requester to redirect their request. For more details about transferring requests for information, see our [Regulation 16 – Code of Practice guidance](#) .

For more information, read our more detailed guidance:

 [Determining whether information is held](#) 

For organisations  
PDF (332.68K)

 [Regulation 16 Code of Practice – Discharge of obligations of public authorities under the EIR](#) 

For organisations  
PDF (286.89K)

## Do we have to tell them what information we have?

Under the Regulations, you should always respond in writing to a request and should normally let a requester know whether or not you have the information they have requested. The Regulations say you do not have to tell the requester whether you hold the information they want if:

- confirming or denying that you hold the information would adversely affect international relations, defence, national security or public safety (see regulation 12(6)); and
- confirming or denying that you hold the information would breach the Data Protection Act (see regulation 13(5)).

If it would be manifestly unreasonable for you to find out what information you hold, we wouldn't expect you to tell the requester what information you have. See [When can we refuse a request for environmental information?](#) for details.

If you are giving the requester the information they have asked for, then you have fulfilled the duty of letting them know what information you hold.

If you are refusing all or part of the request, you still have to say what information you hold. You don't need to describe the information – you only have to say whether you have information that falls within the scope of their request.


## In what form or format should we give the requester the information?

Requesters' rights about the form and format of the information requested are covered in regulation 6.

There are a number of ways you could make information available, including by email, as a printed copy, using removable media such as CD or memory card, or by arranging with the requester to view the information. Normally, you should send the information by whatever means is reasonable. For example, if the requester has made their request by email, and the information is an electronic document in a standard form, then it is reasonable to reply to that email and attach the information.

Requesters have the right to ask that information be made available to them in a particular form or format when they make their initial request. If it is reasonable for you to provide the information in that way, you should do so. If you cannot put the information into the requested form or format, or the information is already publicly available and easily accessible in another form or format, you don't have to provide the information in the way the requester specifies, but you will need to give them your reasons within 20 working days of receiving the request.



The Regulations go further than the Freedom of Information Act in allowing the requester to specify the form and format of the information (the Act only covers form). The form is the way a piece of information is communicated, for example in electronic or hard copy; the format is how the data is arranged within that form, for example using a specific software format. Increasingly, requesters are asking for information in open, reusable formats such as CSV files. There is more guidance about open formats on the [data.gov.uk website](#) .

The Act contains specific provisions relating to datasets. Under the Act, if the information that a public authority is making available in response to a request is a dataset, and the requester has expressed a preference for an electronic copy, then, so far as reasonably practicable, the public authority must provide the dataset in an electronic form that is capable of re-use.

The Regulations do not contain the same provisions. However, if a requester has asked you to provide an environmental dataset in a re-usable format, then you should consider this in the same way as any other request for a particular form or format.

You may also want to consider whether you would like to include anything else with the information, such as a copyright notice for third party information, or an explanation and background context. If the information you are providing originates from a third party, it may be worth consulting them about what you're doing. This does not stop you releasing the information, though – you can only refuse to answer the request if an exception under regulation 12 applies.

For more information, read our more detailed guidance:

#### [When can we refuse a request for environmental information?](#)

For organisations

#### [Datasets](#)

For organisations  
PDF (350.51K)

#### [Form and format of information \(regulation 6\)](#)

For organisations  
PDF (317.63K)

## Do we always have to release the information?

Yes, unless there is a good reason not to. The Regulations provide a number of 'exceptions' for particular circumstances when you can refuse to provide information in response to a request. See [When can we refuse a request for environmental information?](#) for more details.

## Can we change or delete information that has been requested before providing it?

No. Deletion could be a criminal offence under regulation 19 if the deletion is intended to prevent disclosure. You should normally disclose the information you held at the time of the request. There is no exception in the Regulations for information that you hold when you receive the request but that is due for routine destruction shortly afterwards. So you must delay destroying the information and consider

the request in the usual way. You are entitled to change a document by removing or redacting parts that are subject to an exception under regulation 12.

For more information, read our more detailed guidance:

### [Retention and destruction of requested information](#)

For organisations  
PDF (260.9K)

## Do the Environmental Information Regulations allow us to disclose information to a specific person or group alone?

Disclosures under the Regulations are 'to the world'. However, you can restrict the release of information to a specific individual or group at your discretion, by providing information outside the scope of the Regulations.

If you make a restricted disclosure, you should make it very clear to the requester that the information is for them alone. However, if the requester has made it clear that they want the information under the Regulations, and isn't satisfied with receiving it on a discretionary basis:

- you must provide it to them with no restrictions; or
- you can refuse the request if an exception applies.

See [When can we refuse a request for environmental information?](#) for more details.

## Can we charge for the information?

Yes, in some circumstances you can charge a fee for making the information available. Any charge should be 'reasonable' – it should not exceed the costs you incur in making the information available or act as a deterrent to the right to request information. It may cover the cost of the paper for photocopying or printing the information and a covering letter and the cost of postage. It may also include the cost of staff time in identifying, locating or retrieving the information from storage.

You cannot charge for allowing a requester access to public registers or to inspect the requested information. It would not be reasonable to charge for information that would not cost you anything to send (for example, an email attachment).

You can charge for environmental information only if you publish a schedule of charges and details of when you may or may not charge. This gives the requester an opportunity to consider the cost of their request before making it. We encourage you to publish this information as part of your Freedom of Information Act publication scheme, keeping the information up to date in line your duty under the Regulations to progressively make information available. See [What environmental information do we need to publish?](#) for more details.

If you charge a fee, you should refer the requester to your schedule of charges within 20 working days. If you need them to pay in advance, you should tell them this, and the amount. You do not have to provide the information until you have received the fee.

For more information, read our more detailed guidance:



## Charging for environmental information [↗](#)

For organisations  
PDF (75.29K)

# Refusing a request

## In brief...

A requester may ask for any environmental information you hold, but this does not mean you always have to provide it. In some cases, there will be a good reason for not making public some or all of it.

The Environmental Information Regulations state exceptions that allow you to refuse to provide requested information. Some of the exceptions relate to categories of information, for example, unfinished documents and internal communications. Others are based on the harm that would arise from disclosure, for example, if releasing the information would adversely affect international relations or intellectual property rights. There is also an exception for personal data if providing it would be contrary to the Data Protection Act.

Under the Regulations, most exceptions are subject to the public interest test. This is an extra stage in the process of deciding what information to provide, which requires you to balance the public interest arguments for disclosing the information against those for upholding the exception. This means that even if disclosing information would harm, for example, international relations, you must still release the information if the public interest arguments for disclosing it are stronger. The public interest is not necessarily the same as what the public finds interesting.

If you are refusing all or part of a request, you must send the requester a written refusal notice. This includes when you need to inform a requester that you don't hold the information they have requested.

## In more detail

- [What exceptions are there for personal data?](#)
- [How does the exception work when we don't hold any information?](#)
- [When can requests be refused as 'manifestly unreasonable'?](#)
- [How do we work out whether the costs are 'manifestly unreasonable'?](#)
- [How do we work out whether a request we think is vexatious is 'manifestly unreasonable'?](#)
- [How do we deal with requests that are unclear?](#)
- [What other class-based exceptions are available to us?](#)
- [How do the 'adversely affect' exceptions work?](#)
- [What are the 'adversely affect' exceptions?](#)
- [How is information relating to emissions treated differently?](#)
- [How does the public interest test work under the Regulations?](#)
- [How long do we have to consider the public interest test?](#)
- [Is there anything else we need to know about exceptions?](#)
- [What if we are withholding only parts of a document?](#)
- [What do we need to tell the requester?](#)
- [What if the requester is unhappy with the outcome?](#)

## What exceptions are there for personal data?

The information is the personal data of the applicant – regulation 5(3)

Under the Regulations, you don't have to make available environmental information that is the requester's personal data – you should deal with any part of any request for this type of information as a 'subject access request' under the Data Protection Act. You should not require requesters to make a second, separate subject access request, but you are entitled to ask for proof of identity and charge an administration fee for dealing with the subject access request. Read the [Guide to Data Protection – the rights of individuals \(principle 6\)](#) for advice on how to handle subject access requests.

If the requested information is a mix of the requester's personal data and other environmental information, you will need to consider some under the Data Protection Act and some under the Regulations.

Requested information may involve the personal data of both the requester and others. For further information, read our guidance:

### Further reading

 [Personal data of both the requester and others](#) 

For organisations  
PDF (252.76K)

 [How to disclose information safely – removing personal data from information requests and datasets](#) 

For organisations  
PDF (1.31MB)

The information is the personal data of a person other than the applicant – regulation 12(3) and regulation 13

When information is the personal data of someone other than the applicant, regulation 12(3) requires you not to disclose that personal data, except in accordance with regulation 13. Regulation 13 prohibits you from disclosing third party personal data if this would breach the Data Protection Act. To learn more about the Data Protection Act, read the [Guide to Data Protection](#).

The most common reason for refusing to provide third party personal information is that it would be unfair to the individual concerned. Regulation 12(3) is not subject to the public interest test. However, some public interest considerations are relevant when deciding whether you can disclose third party personal data in accordance with regulation 13.

Regulation 13(5) removes the duty to confirm whether or not you hold third party personal data if:

- doing so would breach the Data Protection Act; or
- the data subject would not be entitled to know if their own personal data was being processed.

This exception applies only to personal data about people who are living; you cannot use this exception to protect information about people who have died.

For further information, read our guidance:

 [Access to information held in complaints files](#) 

For organisations  
PDF (142.64K)

 [Information exempt from the subject access right](#) 

For organisations  
PDF (289.45K)

 [Neither confirm nor deny in relation to personal data](#) 

For organisations  
PDF (275.24K)

 [Personal information guidance](#) 

For organisations  
PDF (445.74K)

 [Requests for personal data about public authority employees](#) 

For organisations  
PDF (367.2K)

## How does the exception work when we don't hold any information?

### Regulation 12(4)(a)

When you don't hold the information that has been requested, you need to tell the applicant. Under the Regulations this counts as a refusal of the request. Information is 'held' if, at the time you received the request:

- it is in your possession; and
- you have produced or received it; or
- another person holds it on your behalf.

You do not have to create information to answer a request, but you may have to bring it together from different sources.

Before you claim this exception you should make sure you have done adequate and properly directed searches, and that you have convincing reasons for concluding that you hold no recorded information. If an applicant complains to the ICO that you haven't identified all the information you hold, we will consider the scope, quality and thoroughness of your searches and test the strength of your reasoning and conclusions.

Most of the exceptions under the Regulations are subject to the public interest test, but we recognise that it can be impossible to do a meaningful public interest test if you don't hold the information.

There is further advice on determining whether information is held available under '[What happens if we don't have the information?](#)'.

## When can requests be refused as ‘manifestly unreasonable’?

### Regulation 12(4)(b)

In most cases, the public use the access rights provided by the Regulations responsibly and reasonably, but there may be circumstances where requests:

- are too burdensome to deal with;
- disrupt a public authority’s ability to perform its core functions; or
- seem to be aimed at disrupting the public authority’s performance.

Regulation 12(4)(b) allows you to refuse requests that are ‘manifestly unreasonable’. Requests may be manifestly unreasonable if:

- dealing with a request would create unreasonable costs or an unreasonable diversion of resources; and
- an equivalent request would be found ‘vexatious’ if it was subject to the Freedom of Information Act.

These are the most common types of manifestly unreasonable requests, but there may be other circumstances where the exception could be applied.

## How do we work out whether the costs of dealing with a request are ‘manifestly unreasonable’?

The Regulations do not define a ‘reasonable’ amount of money or time that a public authority should spend on a request, or a linked series of requests from the same person or group – there is no legal equivalent to the ‘appropriate limit’ provided under the Freedom of Information Act.

To work out whether the costs of dealing with a request can be treated as manifestly unreasonable, you should consider whether dealing with the request would place unreasonable demands on your resources – this may depend on the size of your organisation.

Currently, the cost limit set by Parliament for complying with requests under the Freedom of Information Act is £600 for central government, Parliament and the armed forces and £450 for other public authorities. Staff time is currently rated at £25 per person per hour, regardless of who does the work, including external contractors. You can use these limits only as an indication of the costs you might reasonably take into account when complying with a request for environmental information. The cost of complying may exceed the Freedom of Information Act costs limit, but this doesn’t mean it would be manifestly unreasonable under the Regulations for you to comply with the request. You should also bear in mind that there is a presumption in favour of disclosure under the Regulations.

If you decide that a request is manifestly unreasonable, for example because it places an unreasonable burden on your resources, you still have to consider the public interest test. The fact that the request is manifestly unreasonable doesn’t mean there can’t be strong public interest arguments in favour of disclosure.

The code of practice on public authorities fulfilling their obligations under the Regulations does not cover the advice and assistance you should give when you refuse this type of request. However, we would expect you to help a requester to rephrase their request in a way that would allow you to provide some

information.

Remember that the Regulations say you can extend the 20-day period for complying with a request for information to 40 working days, to give yourself more time to locate and provide the information:

- when a request is for a large amount of information that is complex; and
- it would be impracticable to comply with the request or decide to refuse to comply within 20 working days.

In this case, you should let the requester know within 20 working days that you need more time to respond.

For further information, read our more detailed guidance:

 [Manifestly unreasonable requests](#) 

For organisations  
PDF (295.63K)

 [Calculating costs where a request spans different access regimes](#) 

For organisations  
PDF (168.12K)

## How do we work out whether a request we think is vexatious is ‘manifestly unreasonable’?

Sometimes you will receive requests that interfere with your organisation’s ability to perform its core functions – often these types of request are found to be ‘vexatious’ under the Freedom of Information Act. Under the Regulations, you may be able to use the exception at regulation 12(4)(b) to refuse such requests as manifestly unreasonable. We recommend that you consider such requests under the same criteria used to assess whether a request is vexatious under section 14 of the Freedom of Information Act, namely, is the request likely to cause a disproportionate or unjustified level of distress, disruption or irritation?

You should consider the above in light of the Regulations’ presumption in favour of disclosure. Even if you find the request is manifestly unreasonable because it is vexatious, you will still need to consider the public interest test.

For further information read our more detailed guidance:

 [Manifestly unreasonable requests](#) 

For organisations  
PDF (295.63K)

## How do we deal with requests that are unclear?

The request is too general – regulation 12(4)(c)



The exception under regulation 12(4)(c) allows a public authority to refuse requests that are 'formulated in too general a manner'. We interpret this to mean requests that:

- have more than one possible interpretation; or
- are not specific enough to allow you to identify what has been asked for.

When you refuse a request under regulation 12(4)(c), you must go back to the requester and ask for more information within 20 working days of receiving the request (see regulation 9(2)). You must give the requester relevant advice and assistance to help them rephrase or clarify their request. Once you've received more information you'll have 20 working days to deal with the request, provided the new information enables you to understand what the applicant wants.

When you refuse a request as too general, it may be difficult to carry out a meaningful public interest test. As long as you have complied with the duty under regulation 9(2) to offer appropriate advice and assistance, we consider that in most cases you will be able to give significant weight to the public interest in favour of maintaining the exception.

For further information, read our more detailed guidance:

#### [Requests formulated in too general a manner \(regulation 12\(4\)\(c\)\)](#)

For organisations  
PDF (253.28K)

#### [Regulation 9 – Advice and Assistance](#)

For organisations  
PDF (280.88K)

## What other class-based exceptions are available to us?

### The request is for unfinished documents – regulation 12(4)(d)

If a request relates to material that is still being completed, unfinished documents including drafts, or incomplete data, you can refuse to provide the information under regulation 12(4)(d). You must consider the status of the information at the time the request is made.

The aims of the exception are to:

- protect work you may have in progress by delaying disclosure until a final or completed version can be made available. This allows you to finish ongoing work without interruption and interference from outside; and
- provide some protection from having to spend time and resources explaining or justifying ideas that are not or may never be final.

Even if you are applying the exception, you still need to consider the public interest test. We consider drafts to be incomplete documents even after a final version has been completed, but the public interest in maintaining the exception will decline once the final version of a document is finished or published. This is because you will no longer need safe space to complete the work.

If you are aware that another public authority is preparing the requested information and you are relying on the exception, then under regulation 14(4) your refusal notice must:

- specify that public authority's name; and
- provide an estimated time for when the information will be completed.

For further information, read our more detailed guidance:

 [Information in the course of completion – regulation 12\(4\)\(d\)](#) 

For organisations  
PDF (232.96K)

## The request involves the disclosure of internal communications – regulation 12(4)(e)

When a request is for information that is an internal communication, you can refuse it under regulation 12(4)(e). The purpose of this exception is to allow you to discuss the merits of proposals and the implications of decisions internally without outside interference. It allows you to have a space to think in private when reaching decisions, and in this respect it overlaps with the purpose behind the exception for unfinished documents. However, the focus here is on protecting internal decision-making processes rather than protecting unfinished work, and it can apply to completed documents.

In general, communications within one public authority will constitute 'internal communications'. Some general principles you should consider when applying regulation 12(4)(e) to information include:

- The definition of a communication is broad and will include any information intended to be communicated to others or to be placed on file where others may consult it.
- Communications between a public authority and a third party will not be internal communications except in very limited circumstances.
- All central government departments (including executive agencies) are treated as one public authority for the purpose of this exception.

You don't have to refuse every request for information that is an internal communication. The exception is subject to the public interest test – if disclosure would harm the way your organisation makes decisions or gives advice, this will be a factor in favour of maintaining the exception.

For further information, read our more detailed guidance:

 [Internal communications – regulation 12\(4\)\(e\)](#) 

For organisations  
PDF (297.03K)

## How do the 'adversely affect' exceptions work?

The exceptions listed under regulation 12(5) are based on harmful consequences of disclosure. You may refuse to disclose information if disclosing it would 'adversely affect' (harm) one of the interests listed in regulations 12(5)(a) to 12(5)(g).

The adverse effect test under the Regulations is similar to the prejudice test under the Freedom of Information Act.

To show that disclosing information would harm one of the interests in 12(5)(a) to (g) you must:

- identify a negative consequence (adverse effect) of the disclosure that is significant (more than trivial) and is relevant to the exception claimed;
- show a link between the disclosure and the negative consequence, explaining how one thing would cause the other;
- show that the harm is more likely than not to happen.

For more information, read our more detailed guidance:

 [How exceptions and the public interest test work in the Environmental Information Regulations](#)  
  
For organisations  
PDF (307.92K)

 [Information in the public domain guidance](#)   
For organisations  
PDF (372.11K)

## What are the ‘adversely affect’ exceptions?

### International relations, defence, national security, public safety – regulation 12(5)(a)

Regulation 12(5)(a) provides an exception to disclosing requested information if it would adversely affect international relations, defence, national security or public safety.

- ‘International relations’ means relations between governments or international bodies such as NATO, the EU, or the United Nations, or an international court.
- ‘Defence’ means protecting a nation against attack. This part of the exception will usually cover information that, if disclosed, would adversely affect the capability, effectiveness or security of the armed forces.
- ‘National security’ relates to some defence matters, but will extend to wider non-military, constitutional or economic security, such as information about royal protection.
- ‘Public safety’ may be interpreted widely. The exception covers information that, if disclosed, would adversely affect the ability to protect the public, public buildings and industrial sites from accident or acts of sabotage; and where disclosing information would harm the public’s health and safety.

Even where the exception is engaged, you will still need to consider the public interest test.

Under regulation 12(6), you don’t have to confirm or deny whether the requested information exists and is held, if this would adversely affect the matters listed under regulation 12(5)(a). This is subject to the public interest test.

Regulation 15 allows a government minister to certify that the reasons for refusing to disclose information under regulation 12(1) are that this would harm national security and would not be in the public interest.

For further information, read our more detailed guidance:

## [International relations, defence, national security or public safety- \(regulation 12\(5\)\(a\)\)](#)

For organisations  
PDF (267.26K)

## [Interests of the person who provided the information to the public authority \(regulation 12\(5\)\(f\)\)](#)

For organisations  
PDF (344.95K)

### The course of justice, the ability of a person to receive a fair trial or the ability of the public authority to conduct an inquiry of a criminal or disciplinary nature – regulation 12(5)(b)

Under regulation 12(5)(b), you can refuse to disclose information that would adversely affect formal legal proceedings, whether criminal or civil, including enforcement proceedings. The meaning of 'the course of justice' is broad – it covers a range of information, such as court documents and documents covered by legal professional privilege. The meaning of 'an inquiry of a criminal or disciplinary nature' is likely to include information about investigations you conduct about a potential breach of legislation, for example, planning law or environmental law. To apply this exception, the disclosure must adversely affect the inquiry by causing some real harm.

This exception is subject to the public interest. There is a strong public interest in ensuring that the Regulations do not undermine other legal procedures that govern access to court records and information held for inquiries, such as the Civil Procedure Rules and Criminal Procedure Rules.

For the purposes of this exception, the term 'public authority' includes Scottish public authorities.

Under regulation 3(3), when a public authority is acting 'in a judicial or legislative capacity', it is not covered by the Regulations.

For further information, read our more detailed guidance:

## [The course of justice and inquiries exception \(regulation 12\(5\)\(b\)\)](#)

For organisations  
PDF (322.33K)

### Intellectual property rights – regulation 12(5)(c)

Intellectual property rights are granted to those who create and own works that are the result of human intellectual creativity, in areas like industry, science, literature and the arts. Intellectual property rights (IPR) include copyrights, database rights, patents, trademarks and protected designs. These rights do not prevent you disclosing information under the Regulations.

Our view is that disclosing information under the Regulations does not change the fact that IPR, database rights or copyright restrictions may apply. However, where disclosing environmental information would adversely affect those rights, regulation 12(5)(c) does offer some protection. To apply the exception, you must show that disclosing environmental information will harm the ability of the rights holder to exploit or control their IPR – technically infringing IPR is not enough to apply the exception. The IPR can be yours or a third party's. For you to apply the exception, the public interest in maintaining the exception must outweigh the public interest in disclosure.

You cannot place any conditions or restrictions on information you disclose, but you can include a copyright notice. You can then make a claim if the requester or any third party uses the information in breach of copyright.

For further information, read our more detailed guidance:

 [Intellectual Property Rights – regulation 12\(5\)\(c\)](#) 

For organisations  
PDF (350.73K)

## Confidentiality of proceedings where confidentiality is provided by law – regulation 12(5)(d)

You can refuse to disclose information if this would adversely affect the confidentiality of proceedings. 'Proceedings' means your organisation's formal meetings and procedures – it's unlikely to include every meeting you hold or every procedure you have. The proceedings may be those of your public authority or any other public authority and the confidentiality of those proceedings must be provided by law. This includes common law or a specific piece of legislation. If the law does not provide confidentiality of the proceedings, regulation 12(5)(d) will not apply.

Types of proceedings will include (but are not limited to):

- legal proceedings;
- formal meetings where attendees deliberate over matters within a public authority's jurisdiction; and
- circumstances where a public authority exercises its legal decision-making powers.

You cannot use this exception for environmental information on emissions. See [Information relating to emissions](#) below for more details.

For the purposes of this exception, the term 'public authority' includes Scottish public authorities.

For further information, read our more detailed guidance:

 [Confidentiality of proceedings \(regulation 12\(5\)\(d\)\)](#) 

For organisations  
PDF (349.77K)

## Confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest – regulation 12(5)(e)

You can refuse to disclose information if this would adversely affect the confidentiality of commercial or industrial information. To apply this exception, you must consider the following:

- Is the information commercial or industrial?
- Is the information subject to confidentiality provided by law?
- Is the confidentiality protecting a legitimate economic interest?
- Would disclosure adversely affect the confidentiality?

You cannot use this exception for environmental information on emissions. See [Information on](#)

[emissions](#) below for more details.

For more information, read our more detailed guidance:

 [Confidentiality of commercial or industrial information \(regulation 12\(5\)\(e\)\)](#)   
For organisations  
PDF (264.7K)

## The interests of the person who provided the information – regulation 12(5)(f)

This exception allows you to refuse disclose information if this would adversely affect the interests of someone who supplied the information, and that person:

- was not under, and could not be put under, any obligation to supply it;
- supplied it expecting that it would not be disclosed to a third party; and
- has not agreed to the information being supplied.



This exception protects the free flow of information to public authorities and will often apply to information sent to an ombudsman or other regulators for their investigations. It may also cover:

- circumstances where an individual provides information in response to a survey (where they have not given consent to release it into the public domain); or
- privately owned papers deposited in an archive.

You cannot use this exception for environmental information on emissions. See [Information on emissions](#) below for more details.



For the purposes of this exception, the term 'public authority' includes Scottish public authorities.

For more information, read our more detailed guidance:

 [Interests of the person who provided the information to the public authority \(regulation 12\(5\)\(f\)\)](#)   
For organisations  
PDF (344.95K)

Information about the deceased – the Data Protection Act does not cover information about people who have died, so you cannot rely on regulation 13 to withhold this type of information (unless the personal data of third parties is involved). Where you have a request for sensitive information about someone who has died, the most appropriate exception is likely to be regulation 12(5)(f). This is because the information may have originally been provided in confidence and disclosure would be inappropriate. For less sensitive 46 information, and where it is already in the public domain, disclosure is more likely to be possible.

For more information, read our more detailed guidance:

 [Information about the deceased guidance](#)   
For organisations

## The protection of the environment to which the information relates – regulation 12(5)(g)

The Regulations aim to protect the environment by ensuring greater access to environmental information, but also to protect against disclosure of information that could endanger the environment. For instance, it could provide protection for information about the nesting sites of rare birds, or the locations of vulnerable archaeological sites.

You cannot use this exception for environmental information on emissions. See [Information on emissions](#) below for more details.

For more information, read our more detailed guidance:

### [Protection of the environment \(regulation 12\(5\)\(g\)\)](#)

For organisations  
PDF (255.11K)

## How is information relating to emissions treated differently? – regulation 12(9)

The Regulations stress transparency and openness in relation to information about emissions. They provide a greater right of access to information about emissions – regulation 12(9) removes the right to rely on certain exceptions if someone requests information is on emissions.

When requested information is on emissions, you cannot rely on the exceptions at:

- regulation 12(5)(d) – confidentiality of the proceedings of a public authority
- regulation 12(5)(e) – confidentiality of commercial or industrial information
- regulation 12(5)(f) – interests of the person who provided the information
- regulation 12(5)(g) – protection of the environment to which the information relates.

For more information, read our more detailed guidance:

### [Information on emissions \(regulation 12\(9\)\)](#)

For organisations  
PDF (279.39K)

## How does the public interest test work under the Environmental Information Regulations?

The public interest test applies to most of the exceptions in the Regulations. Regulation 12(3) (personal data of a person other than the applicant) is not subject to the public interest test. However, when considering whether disclosing such data is in accordance with regulation 13, you have to take account of the public interest.

Sometimes you may not be able to do a meaningful public interest test, such as when you are refusing a

request under regulation 12(4)(a) because you don't hold the information.

When an exception is engaged, you must consider where the public interest lies before deciding whether to disclose the information. You can refuse to provide information only when the public interest in maintaining the exception outweighs the public interest in disclosure. When considering the public interest test, you should bear in mind the presumption in favour of disclosure under the Regulations – that you should release information unless there is a good reason not to.

You must consider the circumstances at the time the request was made. When considering the public interest arguments in favour of maintaining the exception, you can take into consideration only arguments that are directly relevant to the interests that the exception protects. You cannot rely on general arguments for the public interest in withholding the information.

In addition to the public interest in transparency and accountability, there is a further public interest in disclosing environmental information because it supports the right of everyone to live in an adequate environment, and ultimately contributes to a better environment. Normally, public interest arguments in favour of the exception have to be specifically related to what that exception is protecting, but this is a general public interest argument for disclosure, and it does not have to be related to the specific exception.

Under the Regulations, when more than one exception applies to the information, you can combine the public interest arguments in maintaining the exceptions against the public interest in disclosure. This is different from the approach required under the Freedom of Information Act.

For more information, read our more detailed guidance:

 [How exceptions and the public interest test work in the Environmental Information Regulations](#)  
  
For organisations  
PDF (307.92K)

 [Information in the public domain guidance](#)   
For organisations  
PDF (372.11K)

## How long do we have to consider the public interest test?

You must consider all relevant public interest arguments within the normal time for compliance – no later than 20 working days after the date you receive the request.

Unlike the Freedom of Information Act, the Regulations do not permit any extension beyond this for you to specifically consider the public interest.

The only circumstance under which you can have more time is if the complexity and volume of the information make it impracticable for you to comply, or decide to refuse to do so, within the 20 working days.

## Is there anything else we need to know about exceptions?



If requested information (or some related information) is already in the public domain, it can affect:

- whether the disclosure would still cause an adverse effect;
- whether the test for a class based exception is still met; and
- where the balance of the public interest lies.

These will be important considerations in many cases.

For further information, read our more detailed guidance:

 [Information in the public domain guidance](#) 

For organisations  
PDF (372.11K)

## What if we are withholding only parts of a document?

Often you can withhold only some of the information requested. In many cases you can disclose some sections of a document but not others. Or you may be able to release documents after removing or redacting (editing out) certain names, figures or other sensitive details because they are subject to an exception or are outside the scope of the request.

Under the Regulations, you have a duty to consider whether information you are withholding under one of the exceptions provided by regulations 12(4), 12(5) or 13 can be separated from other information that can be released, and if possible, to disclose that information. For example, if sections of a requested report fall under regulation 12(5)(c), but other sections don't and can be disclosed, you should give the requester those sections. You can do this by redacting (editing) the sections of the report that are subject to regulation 12(5)(c).

The following are guidelines for good practice.

- Make sure redaction is not reversible. Words can sometimes be seen through black marker pen or correction fluid. On an electronic document, it is sometimes possible to reverse changes or to recover an earlier version to reveal the withheld information. Take advice from IT professionals if necessary.
- Give an indication of how much text you have redacted and where from. If possible, indicate which sections you removed using which exemption.
- Provide as much meaningful information as possible. For example, when redacting names, you might still be able to give an indication of the person's role, or which pieces of correspondence came from the same person.
- As far as possible, ensure that what you provide makes sense. If you have redacted so much that the document is unreadable, consider what else you can do to make the information understandable and useful for the requester.
- Keep a copy of both the redacted and unredacted versions so that you know what you have released and what you have refused, if the requester complains.

For further information, read our more detailed guidance:

 [How to disclose information safely – removing personal data from information requests and](#)

You may also wish to refer to the [Redaction Toolkit](#)  produced by the National Archives.

## If we are relying on an exception to refuse the request, what do we need to tell the requester?

If you are refusing to answer a request because an exception applies to the requested information, you must provide the requester with a written 'refusal notice'. Regulation 14 sets out what your refusal notice needs to include.

A refusal notice should:

- be in writing;
- be issued as soon as possible, and no longer than 20 working days after the date you received the request;
- specify the reasons for the refusal, including:
  - the exception you are relying on under regulation 12(4); 12(5) or 13
  - everything you considered in reaching the decision under the public interest test
- inform the requester of:
  - their right to complain to you if they disagree with your decision;
  - their right to complain to the ICO, including relevant contact details.

For further information, read our guidance:

### [Refusing a request under the EIR](#)

For organisations  
PDF (255.82K)

## What if the requester is unhappy with the outcome?

Regulation 11 entitles a requester to complain about your response to their request for information, if they think that it is not in line with the legislation. A requester must complain in writing within 40 working days of receiving the refusal letter.

To deal with such complaints you should have a complaints procedure, known as an internal review.

You should:

- ensure your complaints procedure is triggered whenever a requester expresses dissatisfaction with the outcome;
- make sure your complaints procedure is a straightforward, single-stage process;
- make a fresh decision based on all the available evidence that was relevant at the date of the request for information, not just a review of the first decision;

- ensure the review is done by someone who did not deal with the original request, where possible, and preferably by a more senior member of staff; and
- communicate the outcome of the review to the applicant within 40 working days of receiving their complaint.

Any refusal notice you issue must include details of the complaints procedure and information about how to complain to the ICO.

For further information, read our guidance:

 [Internal reviews under the EIR](#) 

For organisations  
PDF (239.2K)

# Complaints

## In brief...

If someone thinks you have not dealt with their request for information properly, they should start by complaining to you. The Environmental Information Regulations require you to have an internal review or complaints procedure for requests – for more detail, see [When can we refuse a request for environmental information?](#) You should inform the requester of the outcome of the review within 40 working days of receiving their complaint. If after going through your complaints procedure the requester is still dissatisfied, or if you fail to review your original decision, then the requester can complain to the Information Commissioner's Office (ICO).

When you refuse a request, you must always let people know about their right to complain to the ICO.

We have a general duty to investigate complaints from members of the public who believe that a public authority has failed to respond correctly to their request for information. If someone makes a complaint against you, our complaints handling process gives you an opportunity to reconsider your actions and put right any mistakes without us taking any formal action.

If the complaint is not resolved informally, we will issue a decision notice. If we find that you have breached the Regulations, the decision notice will say what you need to do to put things right.

We also have powers to enforce compliance if you have failed to proactively provide environmental information in line with the Regulations, whether or not we have received a complaint about this.

## When might the ICO receive a complaint about how we have handled a request?

If someone thinks you have not dealt with their request for information properly, they should start by complaining to you. You must have an internal complaints procedure, generally known as an internal review, as explained in [When can we refuse a request for environmental information?](#) The internal review gives you an opportunity to reconsider the request. If the requester remains dissatisfied with the outcome of your internal review, or if you fail to review your original decision, then the requester can complain to the ICO.

Complaints about a request made under the Regulations must be submitted to us within three months of you issuing the outcome of your internal review. Regulation 18 gives the Information Commissioner the power to enforce the Regulations; it effectively imports the enforcement provisions of Part 4 of the Freedom of Information Act 2000 ('the Act') into the Regulations.

We focus on whether you have complied with the Regulations. We don't punish public authorities, or compensate requesters. We cannot investigate other matters that may lie behind the request, or make judgements about a public authority's actions outside its obligations under the Regulations.

Regulation 19 mirrors section 77 of the Act, so the same criminal offences are included in the Regulations.

## Sample questions we ask public authorities

We have published the standardised sample copy that our case officers use when writing to public authorities, including introductory information about the exceptions and key questions we may need to ask. The questions are not exhaustive and case officers tailor their correspondence in each case.

We have made this internal ICO resource available to help with transparency around freedom of information requests and how we approach casework. It may help public authorities to consider these questions, when deciding if relevant exceptions apply.

 [View sample questions for public authorities – EIR](#) 

For organisations  
PDF (493K)

## Further information

To find out how we handle complaints, read the section [What happens when someone complains to the ICO?](#) in the Guide to Freedom of Information. The guide refers to the Freedom of Information Act only, but we exercise the same powers when we receive a complaint about a request for environmental information.