

## **Freedom of Information Act (FOIA) and Environmental Information Regulations (EIRs) Policy**

### **Policy Statement**

The Freedom of Information Act (FOIA) gives a public right of access to information held by public bodies. The Office of the Future Generations Commissioner is a listed body of Schedule 1 FOIA and is therefore subject to the Act.

The Environmental Information Regulations (EIRs) 2004 provide public access to recorded environmental information held by the Commissioner.

The Commissioner is committed to ensuring that information is well managed according to best practice standards and in compliance with the Commissioner's legal duties under FOIA and EIR.

The Commissioner expects that all staff and associates continue to work in a manner that ensures openness and transparency while protecting the personal information of individuals.

### **What FOIA covers**

All information held by a public body; held means any format on any system. This includes hard copy documents, drafts, information in personal notebooks, post-it notes, flip charts; electronic information held on mobile devices, cloud based servers, personal email systems used for work purposes.

FOIA assumes disclosure and is purpose blind; the starting point to responding to a request is that all information relevant to the request is releasable unless an exemption applies.

Even if an exemption applies a public interest test (PIT) will need to be carried out to assess factors in favour or against release. The PIT and any resulting decisions must be fully documented.

A requestor has two rights - the right to be told if we hold the information requested and the right to be given a copy of it.

## Handling Requests for Information: things to bear in mind

- There is a time limit of 20 working days for sending final responses to requests. Remember that this begins as soon as a request is received by the Commission. Within this timescale we should either provide the information or explain, as fully as possible why we are not doing so.
- It is vital that you quickly establish a clear understanding of what information is being requested. If you have any doubts at all you will need to clarify the request with the requester.
- The onus is on us to help a requester to obtain the information they want.

## Environmental Information Regulations (EIRs)

The Environmental Information Regulations (EIRs) are a parallel regime that give a right of access to information about the activities of public authorities that relate to or affect the environment.

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.

- 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.

The Regulations cover any recorded information held that falls within the definition of 'environmental information'. Unlike FOIA, the Regulations do not explicitly exclude information that we hold solely on behalf of another person or body. The Regulations say that any information that is in our possession that we have produced or received is considered to be 'held'.

If a member of the public asks for information, we only have to provide information we already have in recorded form. We do not have to create new information or find out the answer to a question.

### For further detailed guidance on EIRs

<https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/>

## Responding to a Request for Information

The following section describes the process of handling a request from receipt to provision of information to the requestor. Also see Appendix B Checklist.

### Stage 1 – receive the request

- Can the request be handled as a **routine disclosure (a 'business as usual' request)**?
  - Requests for a leaflet, or brochure, or information that has previously been released can be treated as 'business as usual'.
  - Such requests are likely to fall within our **publication scheme** and a response should be sent promptly or within 5 working days.
- Can the request be handled as a **'business as usual' enquiry**?
  - Requests which are not for recorded information we hold, but instead ask for your opinion on an issue or ask questions, such as 'please explain your policy on x' or 'please explain your decision to do y', are not requests for information and therefore should be treated as routine correspondence.
  - Such queries should be dealt with in line with our general enquiry handling and customer service guidelines.
- Is it a **request for information** under the FOIA?
  - Assess whether the request is for **general information**, in which case it falls within the FOIA; or for environmental information in which case it will fall within a separate parallel access regime (EIR); or for the applicant's own personal information in which case it will need to be handled as a subject access request under the Data Protection Act.

## Stage 2 – is the request a valid FOIA request?

- A valid request for information needs to be written (including email), give the name of the applicant, an address for reply (which can include an email address), and include a description of the information required.
  - Invalid request? – advise and assist the requester
  - Unclear what information is being requested? – establish a dialogue with the requester to clarify the request to help identify and locate the information as soon as possible.
  - If a request for information is so imprecise that it is not possible to locate the information and you seek clarification, the 20 working day period does not start until you receive a clarified request which is sufficiently specific for you to identify the information described.
  - If clarification does not result in a good enough description to reasonably locate and identify what the requester wants, you may not be obliged to answer the request. However you must be sure that you have done as much as you can to advise and assist before refusing the request.
- If the requester is unable to make their request in writing, for example due to a disability, make a written note of any request made by telephone and confirm this with the requestor. At this point the request is considered a written request.
- Record the request on the Information Request excel spreadsheet. Use the system to maintain a detailed record of the progress of the request. Provide the requester with an acknowledgement of receipt of the request. Inform the requester how their request will be dealt with, and where necessary set out the shared understanding of what has been requested.
- A final response to the request must be sent promptly and, in any case, no later than **20 working days** after the day the request is **received**.
- **Repeated or vexatious request?**

You are not obliged to answer **repeated** requests for information from an individual provided that:

- The request is from the same person,
- We have already answered the request,
- The new request is identical or substantially similar,
- There has not been any relevant change of circumstances since the last request was answered and
- There has not been a reasonable interval since we originally answered.

You are not obliged to provide information in response to **vexatious** requests:

- You will need to consider each new request on its own merits
- A request can be treated as vexatious when its primary purpose is to cause harm or annoyance and not to obtain information

Reasonable advice and assistance should still be provided to the requester.

### **Stage 3 – establish whether the information is held**

- Consider all recorded information held, regardless of age, format, origin and classification.
- Do relevant searches of all IT systems, check relevant paper records, send an office wide email (Appendix B). Keep a record of the internal searches we have completed.
- If the information is not held, let the applicant know
  - Provide advice and assistance – other information held, the identity of another body that may hold it, any further explanation

### **Stage 4 – estimate the cost**

- Requests for information can be refused if they are estimated to take an inappropriate amount of time to deal with.
- Estimate whether the cost of complying with the request exceeds the appropriate limit of £450 -
  - Only consider the following factors when estimating the cost:

- Determining whether the information is held
  - Locating the information or documents containing the information
  - Retrieving the information
  - Extracting the information from documents
- Costs incurred by staff must be calculated at the rate of £25 per person per hour.
  - Consider whether costs can be aggregated (two or more requests for same or similar information made within 60 working days by same person, or different people acting together or as part of a campaign).
- If the cost of complying with the request would exceed the appropriate limit, you can refuse the request, charge a fee, or continue to answer it without charging a fee.
  - Notify the applicant:
    - You are still required to confirm or deny whether the requested information is held (unless the cost of this in itself exceeds the appropriate limit).
    - Advise the requester to reformulate their request.
    - Advise and assist the requester on how they can narrow down and refine their request.

### **Stage 5 – gather the relevant information**

- Gather the information from all relevant internal sources
- Bear in mind the scope of the request – select only information which has been asked for

### **Stage 6 – assess whether the information requested should be disclosed**

- The requester has two rights: the right to be told if we hold the information requested and the right to be given a copy of it.
- Information can be protected by using exemptions. Check whether any exemptions apply. In particular consider whether -

- any of the information is **personal information**
  - the information is **now, or will soon be publicly available**
  - any of the **other exemptions** in the Act apply – in particular whether it is information we have received in the discharge of our duties, or the information is of a confidential nature
- See **further explanation of possible applicable exemptions** below.
  - If a qualified exemption applies, the public interest in withholding the information has to outweigh the public interest in releasing if information is to be withheld. This assessment will essentially be a matter of judgement on a case by case basis.
  - Keep a record of the factors considered when applying a particular exemption and when balancing the public interest test.

### Stage 7 – other issues and considerations

- Some information requested might, if released, affect the **interests of third parties**. Where this is the case, third parties should be consulted where it is reasonable to do so.
- It is possible to extend the 20 working day timescale if a qualified exemption is being considered and it is necessary to consider the public interest test. The deadline for a response may be extended by up to a further 20 working days. The requester must be informed that the deadline is being extended and of the exemption(s) being considered.
- Requesters can express a preference about the **means** or **form** in which information is **communicated**. Information may be requested in the form of copies of original documents, a variety of electronic formats, or via an opportunity to inspect the record containing the information. Where practicable and reasonable to do so, you should meet any such request. If you are unable to comply with an expressed preference you should explain why.

### Stage 8 – charge a fee

- We may charge for information to recover the cost of photocopying, printing and postage where this exceeds £10.

Internal

- Issue a fees notice. The requester then has three months to pay the fee, beginning the day the fees notice is given to them.
  - The 20 day period is put on hold while you are waiting for the fee to be paid.
  - If the requester disputes the fee they can appeal through our complaints procedure.

### Stage 9 – fee received

- The 20 day period resumes the day after the fee is received.

### Stage 10 – respond to the request

- Prepare the information for disclosure (redacting any information where necessary, see further explanation of **redacting** below)
- Tell the requester that you hold the information unless this confirmation is exempt
- Provide a copy of any information unless it is exempt
- Before releasing information you must be satisfied that you have the necessary authority to do so. Obtain senior management sign off.
- If you do not have to confirm or deny whether the information requested is held and/or you are not required to disclose the information because an exemption applies, provide the applicant with a **refusal notice** giving a full explanation of why you are not providing the information:
  - The refusal notice must be clear and specific and it should explain our decision and reasons for withholding the information
  - The notice must specify the section and sub-section of the exemption being applied
  - Where more than one exemption is genuinely valid, we should specify all relevant sections and sub-sections separately and clearly state the reasoning behind each of our decisions and the specific information to which each applies
  - If the applied exemption is 'prejudice based', we must explain the likely harm which would arise from disclosure or from

confirming or denying that the information is held, as appropriate.

- If the applied exemption is a qualified one to which the public interest applied, we must assess the public interest test and state our detailed reasoning in the refusal notice.
- The notice must contain information about our complaints procedure and the right of appeal to the Information Commissioner's Office

## **Stage 11 – Appeals**

Applicants may appeal because:

- The response took longer than 20 working days
- Information was withheld and they believe that the exemptions have been wrongly applied
- The calculations of costs is incorrect
- The request has in any other way been mishandled

### **Particular scenarios to consider**

#### **Information requests from journalists**

If we receive a press related question it may be appropriate to send the answer to the request to a wide range of journalists so that they all get the same information at the same time as there is the assumption that a press release can be given to any journalist and that draft press releases should be withheld until formalised and completed.

#### **Draft documents**

The section 22 information intended for future publication exemption may apply to drafts of documents intended for publication, although it does not apply to drafts in general.

Internal

The key issue is the likelihood of publication. For the exemption to apply there must be a firm intention to publish the information at the time the request is received. The fact that the information contained in a draft form may be subject to amendment or may be omitted from the final published version of the information does not mean that it would be wrong to claim the exemption.

It may be necessary to distinguish between the information which we propose to publish and associated background information, for example discussion papers, which may have been prepared in order to assist in the decision as to publication but are not, themselves intended for publication.

### **Consulting relevant third parties regarding requests**

Disclosure may affect the legal rights of third parties, such as where information is a trade secret or is subject to the common law duty of confidence, or where it constitutes personal information. So as to ensure that such rights are given due regard, we should consult with relevant third parties, except where to do so is impractical or disproportionately expensive. The determination of whether information should be disclosed will, however, remain the decision of the Commission.

### **Environmental Information**

Information requested containing environmental information should be handled in accordance with the parallel information regime – the Environmental Information Regulations (EIRs). See information above.

### **Redacting Guidelines**

- As the FOIA refers to the release of information rather than documents it may be appropriate to release just some of the information within a document.
- Any potentially sensitive information not relevant to the request or for which disclosure was not authorised should be removed or 'redacted' in the copy sent to the requester.
- This will involve going through a document line by line.
- Take care when information has to be redacted.
- Deletions in MS Word can be reversed if a document is sent electronically.

- If text is blacked out with a marker pen it can remain legible when photocopied.
- If a redacted document is transmitted electronically, it should be saved as a pdf file, or scanned and saved as an image file.
- The safest way to redact hard copy documents is by copying the original document, cutting out the redacted sections and photocopying the remaining text.
- It is possible that some information contained in a document will not be relevant to the request that has been made. In this case it will generally be appropriate for these sections of the text to be removed. However, if you are satisfied that there is no sensitivity about the additional information, you could consider releasing the whole document.
- Remember we have a duty to, as far as possible, assist requesters by ensuring that they receive the information in the form most suitable for them.

## **Internal Review**

If a requestor is dissatisfied with our response (for example, this could be in relation to time taken, assistance given or information provided) they may request that we undertake an internal review of the handling of the request.

A requestor may go directly to the ICO to make a formal complaint. The ICO normally requires that the requestor goes through the internal review process before they will consider the complaint so it is an opportunity to take another look at what we have done and to correct anything we can.

The Internal Review should be carried out promptly and by a different person to the one who managed the original request.

The outcome of the Internal Review should be agreed by a member of the senior staff team.

Timescale – not proscribed but you should aim to complete within x working days and communicate this timescale to the requestor.

Documentation – ensure all aspects of handling the Internal Review are documented carefully.

## **Consider the following:**

### Timescales

- Were timescales met? If not was this and the reasons for it communicated to the requestor?

### Duty to assist

- Review communication, tone and content
- Other bodies more likely to hold information sought?

### Clarification of scope of request

- Was the original request clear? Did we seek clarification?
- Did the request relate to personal information?

### Identification of information relevant to the request

- Was the proscribed process followed?
- If further information is identified, say so and provide it.

### Application of exemptions

- Correctly applied?
- Public interest test?

### Redaction

- Has information intended for release been incorrectly redacted?

### Payment of fees

- Correctly calculated and applied?

## **Supporting Policies**

Information Governance Policy

IT Security & Acceptable Use Policy

FOI Policy 1.0  
Created May 2018  
Review May 2019

Information Security Policy

Data Protection (DP) Policy

Data Breach/Loss Policy & Guidance

## Appendices

### Appendix A - Request for Information Checklist

<b>Responding to a request for information</b>	
Request for information received:	Assign unique ref number (e.g. 18001JL) -year, number in sequence, officer initials)
Record date and method of request	e.g. email, post, verbal, text, Twitter
Initial Assessment - 'business as usual'? If yes:	Respond, provide information/ signpost, close case -query recording system eg excel DB?
If not simple 'business as usual' request:	Assign to responsible officer
	Open response file
	Assign ref number, identify 20 day deadline.
	Set 'Information Agreed' date 5 days prior to response date?



Internal

	Ensure you understand scope of request eg is it FOI/EIR/SAR? EIRdeadline?
	Send out immediate email to staff (see std text in FOI Policy)
	Log date sent. Give 5 days to respond yes/no
	Respond to enquirer e.g. 'thank you for your request for information (include text of enquiry). Since this relates to (your pd/info held by the FGC) this request will be dealt with as a foi/eir/sar request'.
	'To help us to identify the information you require could you please provide the following details.....'
	NB Personal Data (PD) is exempt under s40 of FOIA but if it is pd of individual considered instead as a SAR. See DPA policy/guidance for information about responding to SAR and other rights under GDPR
Format and method of response	Welsh? Allow additional time in your planning if translations or transcriptions to other media are required.
Payment due?	Is a Fee payable? Eg for cost of copying, Clock stops until any payment is received.
	Record date payment is received. Clock starts
Clarification of broad request	'Once we have received this clarification and any fee due We aim to respond with the information you have requested as soon as we can within the 20 day timescale. If for any reason we are not likely to be able to comply with this timescale we will contact you again to explained and give you a revised date'.
Preparing your response	Gather info identified within scope of request



Internal

	Assess for issues eg 3rd party data, PD,
	Check exemptions?
	Qualified exemptions - conduct a PIT
	Redaction required?
	Prepare final information and response letter eg if exemptions have been applied.
	Senior officer to check final response
	Send copy of information and response to enquirer in format requested.
	Add to disclosure log.
	Close case
Information not held	If no information held prepare <b>refusal letter</b> eg info not held, info for future publication.
	Be helpful, other orgs may hold info sought, .
Information not provided	If information requested is held but not provide prepare refusal letter that details exemptions applied eg info intended for future publication.
	Add "if you are dissatisfied with the way this request has been dealt with you can request an internal " review, timescale and info provided.
	Include ICO contact details
	Record all contact with/from enquirer. See File Cover Sheet
	If request is contentious ensure you seek legal view ASAP.
	NB you can contact the ICO but they can only advise in broad way.
<b>Internal Review request received</b>	



You are required to consider your handling of the request - duty to assist, timescale of response and information provided	Record date received
	Assign ref no and identify original request and file
	Identify senior officer to conduct review
	Respond to enquirer-
	Eg 'We have received your request for an internal review of our handling of your request for information (ref no)....'
	include - estimated response time, what you will consider - timescale, info provided
<b>Response to complainant – IR</b>	e.g. 'IR has been completed, I have considered the following aspects of the handling of your request.....'
	Timescale - 'The Act requires that we respond to your request for information within 20 working days. It also allows clock stops if further clarification is required or fee payable. In your case I have found that.....'
	Information provided- 'I have reviewed the information held by the OFGC that relates to your request and I can confirm that all info held by us was provided to you...'
<b>Exemptions Applied/PIT</b>	I have considered your request/ release very carefully, and applied a Public Interest Test (PIT) as required by this exemption. I find that the exemption was correctly/incorrectly applied'.
Ensure you document your application of PIT and your rationale for your actions.	Consider your Duty to Confirm or deny*
	If you remain dissatisfied you may make a complaint to the ICO.



	Provide contact details ICO
	NB - If any info was missed the first time explain why, apologise and provide it.
<b>Response to ICO in event of a complaint</b>	Record keeping = evidence of actions
	ICO will ask for your response to complaint. Provide a full and factual response. Ensure you include any details that is particular to the Commissioner's role and duties under legislation.
	Your record keeping of details of original request and IR will be key. Provide copies of responses and infor provided if required, include protective marking if necessary. Record details of response to ICO.
	If mistakes have been made, say so and details any actions taken to correct this.

## Appendix B - FOI Request File Coversheet

### File Coversheet



Internal

Action	Notes/Dates
Requestor Name	
Case Ref No.	
Date Received	
Request for Personal Information of Requestor?	
Request for Public Information	
Business as usual request?	
Response by (20 days)	

Communication with Requestor	Notes/Dates

Case Closed	Notes/Dates
Information Provided/Refused	
Notice provided to requestor	

Request for Internal Review	Notes/Dates
Received	
Allocated to Officer	
Review completed	
Decision communicated	

Communication with ICO	Notes/Dates

## Appendix C - Suggested Email Text to Staff

### To All Staff:

URGENT FOI Request Received – Your response is required by {5 WORKING DAYS}

We have received a request for information as follows:

{INSERT EXTRACT OF INFORMATION REQUEST HERE}

Please conduct a search of your emails, files, folders and hard copy records including drafts, notebooks, post-its, flip charts.

Please ensure you check your mobile phones for any text messages

Personal systems used for work purposes should also be checked.

### **IMPORTANT**

If you identify any information that might be relevant to this request **DO NOT SEND IT TO ME.**

Please respond using the YES/NO tab on this email. I will then contact you to identify the relevant information.

If you have any queries about the content of the message please contact me.

Thank you for your prompt action.

{NAME}