

Regulation 16 Code of Practice – Discharge of obligations of public authorities under the EIR

Environmental Information Regulations

Contents

Introduction.....	2
Overview.....	2
Status of the Code.....	3
What the EIR says.....	3
What the Code says.....	4
Training.....	4
Proactive dissemination of information.....	5
The provision of advice and assistance to persons making requests for information.....	6
Clarifying the request.....	6
Form and format.....	6
Timeliness in dealing with requests for information.....	7
Charges and fees.....	7
Transferring requests.....	7
Consultation with third parties.....	10
Public sector contracts.....	12
Accepting information in confidence.....	13
Consultation with devolved administrations.....	14
Refusal of requests.....	15
Review and complaints procedure.....	15
Practical benefits of conforming to the Code.....	15
Consequences of not conforming to the Code of Practice.....	16
Other considerations.....	17
More information.....	17

Introduction

1. The Environmental Information Regulations 2004 (EIR) give rights of public access to environmental information held by public authorities.
2. An overview of the EIR's main provisions can be found in [The Guide to the Environmental Information Regulations](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities fully understand their obligations and promote good practice.
4. This guidance gives advice to public authorities about discharging their obligations under regulation 16 of the EIR.

Overview

- The EIR Code of Practice fulfils the Secretary of State's duty in regulation 16 of the EIR.
- The Code provides guidance on desirable practice for public authorities to follow when discharging their functions under the EIR.
- Keeping to the Code will benefit public authorities and offer good customer service.

5. Regulation 16 applies section 47 of the Freedom of Information Act 2000 (FOIA) and modifies it to relate to the EIR. It places a duty on the Commissioner to promote good practice among public authorities and their observance of the EIR and Codes of Practice.
6. The EIR Code of Practice (the Code) provides guidance on how to deal with requests for environmental information. Public authorities should use the Code as a handbook to help with their day-to-day handling of requests.
7. This guidance clarifies:
 - the status of the Code,
 - the practical benefits of conforming to the Code, and

- the consequences of not conforming to the Code.

Status of the Code

8. The Code derives from the legislation. Regulation 16 of the EIR says the Secretary of State may issue a code of practice providing guidance to public authorities.

What the EIR says

9. Regulation 16 states:

16. (1) The Secretary of State may issue, and may from time to time revise, a code of practice providing guidance to public authorities as to the practice which it would, in the Secretary of State's opinion, be desirable for them to follow in connection with the discharge of their functions under these Regulations.

(2) The code may make different provision for different public authorities.

(3) Before issuing or revising any code under this regulation, the Secretary of State shall consult the Commissioner.

(4) The Secretary of State shall lay before each House of Parliament any code issued or revised under this regulation.

(5) The general functions of the Commissioner under section 47 of the Act and the power of the Commissioner to give a practice recommendation under section 48 of the Act shall apply for the purposes of these Regulations as they apply for the purposes of the Act but with the modifications specified in paragraph (6).

(6) For the purposes of the application of sections 47 and 48 of the Act to these Regulations, any reference to—

.....

(c) a code of practice made under section 45 of the Act includes a reference to a code of practice made under this regulation.

10. To date, only one Code of Practice has been issued under regulation 16. This is the [Code of Practice on the discharge of](#)

[the obligations of public authorities under the Environmental Information Regulations 2004 \(SI 2004 No. 3391\)](#). It was issued in February 2005.

What the Code says

11. The EIR states the legal requirements for public authorities, whereas the Code states what level of procedural service would be good practice for public authorities to achieve.
12. The Code therefore offers practical day-to-day advice for dealing with requests for environmental information. Keeping to the Code will result in benefits for public authorities including a reduced likelihood of breaching the EIR, good customer service and an improved public image.
13. The Code covers the following areas:
 - Training
 - Proactive dissemination of information
 - The provision of advice and assistance to persons making requests for information
 - Timeliness in dealing with requests for information
 - Charges and fees
 - Transferring requests
 - Consultation with third parties
 - Public sector contracts
 - Accepting information in confidence
 - Consultation with devolved administrations
 - Refusal of request
 - Review and complaints procedure
14. The ICO has produced separate detailed guidance on several of these areas, drawing on the requirements of the EIR, the Code and our practical experience. Where separate detailed guidance is available, links are provided.

Training

15. Part I of the Code concerns the training of public authority employees regarding requests for environmental information.
16. The Code says it is essential that employees are trained to be familiar with EIR requirements. In practice this does not mean every employee must understand and be able to apply all EIR

provisions. The overall purpose of this part of the Code is to ensure that employees can recognise when a request is made under the EIR.

17. A request for information could be received anywhere in a public authority, for example in correspondence about other matters. Public authorities could also receive verbal requests for environmental information because, unlike FOIA, the EIR does not require requests to be in writing. This means someone could make an EIR request over the telephone or face to face.
18. The 20 working day timescale for response starts when the public authority receives the request for information. It does not start when the public authority recognises the request or when it is passed to the right person/department for response.
19. Therefore it is important that all employees with a role that brings them into contact with the public or other organisations can identify a request for environmental information and know the public authority's procedure for dealing with it. Having suitably trained employees gives a public authority the practical benefit of helping to ensure requests are processed promptly and within the statutory time limits.
20. The Code does not say how public authorities should train their employees. But it states that when planning and delivering training, public authorities should be aware of other provisions affecting the disclosure of information such as FOIA, the Data Protection Act 1998 and anti-discrimination legislation.
21. To help public authorities train their employees, the Commissioner has produced guidance on the EIR including the [Guide to EIR](#) and detailed guidance on [what is environmental information](#). The Commissioner also offers [training videos](#) on information rights.

Proactive dissemination of information

22. Under regulation 4, public authorities have a duty to make environmental information proactively available by electronic means that are easily accessible to the public. They also have a duty to take reasonable steps to organise their records and routinely publish them to make the information available to the public in a systematic way.

23. Part II of the Code gives advice to public authorities on how they could comply with regulation 4.
24. The Commissioner has produced detailed guidance on [proactive dissemination](#). It explains how public authorities can meet their obligation to progressively make environmental information available to the public, including details on the information required by the Directive.

The provision of advice and assistance to persons making requests for information

25. Regulation 9 of the EIR requires public authorities to provide advice and assistance to requesters. Part III of the Code provides guidance to public authorities on recommended practice to follow.
26. The Commissioner has produced detailed guidance for public authorities on their duty to give applicants reasonable [advice and assistance](#).

Clarifying the request

27. The Code advises what should happen when a public authority receives an ambiguous request or the applicant has not described the information they are seeking in a way that would allow it to be identified or located. As far as practicable, the public authority should provide advice and assistance to enable the applicant to more clearly describe what they are seeking.
28. The purpose of giving this assistance is to clarify the nature of the information being requested. The Code is clear that public authorities should not use this step to ask about the applicant's aims or motivation.
29. The Commissioner has produced separate detailed guidance for public authorities on [interpreting and clarifying requests](#) and has published additional guidance about [requests formulated in too general a manner](#).

Form and format

30. Regulation 6 of the EIR allows the applicant to ask for the information to be given to them in a particular form or format unless there is another reasonable approach to giving the

information or it is already publicly available and easily accessible in another form or format. The Code provides advice to public authorities on how they could comply with regulation 6.

31. For more on this subject, see the Commissioner's detailed guidance on [form and format](#) of information regarding requests made under the EIR.

Timeliness in dealing with requests for information

32. The timescale for response to requests for environmental information is set out in regulation 5(2) of the EIR. It states that requests must be responded to no later than 20 working days after the date of receiving the request. Part IV of the Code gives advice on timeliness in dealing with such requests.
33. The Commissioner's guidance on [time limits for compliance](#) gives more detail about timeliness and takes into account the Code's advice.

Charges and fees

34. The EIR does not require public authorities to charge for environmental information but under regulation 8 they may make reasonable charges. Part V of the Code advises public authorities about charging.
35. The Commissioner has produced detailed guidance on [charging for environmental information](#). This explains how public authorities should comply with the charging regime in regulation 8 of the EIR. It also gives examples of when charging is likely to be considered reasonable.

Transferring requests

36. The rules on transferring environmental information requests from one public authority to another are in regulation 10 of the EIR. Part VI of the Code gives public authorities good practice guidance on transferring requests.
37. Regulation 10 states:

10. (1) Where a public authority that receives a request for

environmental information does not hold the information requested but believes that another public authority or a Scottish public authority holds the information, the public authority shall either—

(a) transfer the request to the other public authority or Scottish public authority; or
(b) supply the applicant with the name and address of that authority,
and inform the applicant accordingly with the refusal sent under regulation 14(1).

(2) Where a request is transferred to a public authority, for the purposes of the provisions referred to in paragraph (3) the request is received by that public authority on the date on which it receives the transferred request.

(3) The provisions referred to in paragraph (2) are—
(a) regulation 5(2);
(b) regulation 6(2)(a); and
(c) regulation 14(2).

38. For regulation 10 to apply, the public authority first needs to be satisfied that it does not actually hold the information requested. The Commissioner has produced detailed guidance for public authorities on [determining whether information is held](#) and guidance on [information held by a public authority for the purposes of the EIR \(regulation 3\(2\)\)](#).
39. If the public authority holds only some of the requested information, it can make the transfer only regarding those parts of the information that it does not hold. Regulation 10 does not excuse the public authority from dealing with the request for information it does hold.
40. The Code says the public authority needs to tell the applicant it does not hold all the information. If the information is freely available via a third party's public register, the public authority may refer the applicant to that register as part of giving advice and assistance. However, the public authority is still obliged to respond to the request if, for example, the applicant asks for the information in the form it holds it in.
41. In some cases the public authority may consider it appropriate to transfer the request for the information it does not hold directly to the other public authority. Transfers need to take

place as soon as is practical. However, before making a transfer the Code advises that the public authority should:

- always consult the other public authority to check whether they do actually hold the information and whether the request should be transferred – if in doubt, the public authority should not transfer the request;
- not disclose the identity of the person making the request during the consultation unless that person has consented;
- ensure it has the applicant’s consent before making the transfer (there may be valid reasons for the applicant not wanting the transfer); and
- give the applicant enough details about the date and destination of the transfer if it receives consent.

42. The public authority does not need to transfer the request in every case as regulation 10(1)(b) says it can instead advise the requester to redirect their request.

43. Public authorities should therefore consider how they could best help the applicant. The Code says this could involve:

- informing the applicant that the information sought might be held by another public authority;
- giving contact details for the other public authority;
- suggesting that the applicant reapply to the other public authority directly; or
- if the public authority that received the request is perceived by the public to be linked to the other authority, explaining to the applicant the difference between the two authorities.

44. The Code states that if a public authority does not know who may hold the requested information or cannot facilitate the transfer or it is inappropriate to transfer, it should consider what advice or assistance it can give the applicant, if any. A refusal notice should also be issued to the applicant explaining that the information is not held.

Example

The Commissioner has rarely dealt with a complaint under regulation 10.

In Decision Notice [FS50292889](#) the public authority (a Council) did not hold the information requested but knew which other public authority would hold it. The Commissioner considered whether the Council should have transferred the

request directly to the other public authority to comply with its obligations under regulation 10.

The Commissioner's view was that the Council had given the complainant enough information in that case to help them access the requested information elsewhere. As a result the Commissioner decided the Council had complied with regulation 10(1)(b).

45. In both instances – where a transfer is appropriate and not appropriate – public authorities must still issue a refusal notice under regulation 12(4)(a) (information not held). For more about this type of refusal notice, see the Commissioner's guidance on [refusing a request under the EIR](#).
46. If a public authority receives a transferred request, it should treat it as normal under the EIR. The time for compliance will count from the day the transfer is received. For detailed information on response timescales under the EIR, see the Commissioner's [time limits for compliance](#) guidance.

Consultation with third parties

47. Unlike FOIA, when a request is received about environmental information wholly or jointly owned by third parties, the public authority has no explicit duty under the EIR to consult third parties (unless the information relates to public records transferred to a public record office, as stated in regulation 17).
48. However, the Commissioner does recommend that as a matter of good practice, public authorities do consult the third party that provided the information before responding to the request. Part VII of the Code provides guidance on consulting third parties should a public authority choose to do so.
49. The Code says that in certain cases the public authority may decide consulting third parties is not appropriate because the cost would be disproportionate. This could be, for example, because many third parties are involved or the information has previously been subject to a consultation.
50. If the views of a large number of third parties are needed and they have a representative organisation (for example a trade body) that can express views on their behalf, then the public authority could decide it is sufficient to consult just that

organisation. Alternatively, public authorities could regard it as sufficient to consult just a representative sample of the third parties.

51. Consulting third parties is not a statutory requirement. But sometimes the nature of the exception being considered raises the likelihood that the public authority will want to do so.

Example

Application of the exception at regulation 12(5)(f) – *Interests of the person who provided the information to the public authority.*

When applying this exception the public authority needs to consider whether the interests of the person providing the information will be adversely affected by disclosure.

The public authority needs to be able to evidence the harm that would arise from disclosure. In some instances, it may be possible to evidence this without consulting the third party, for example if the third party had provided their views on disclosure at the time the information was collected, or the public authority can explain the harm without consent, given the circumstances of the case and the experience of the public authority in the context.

However, in many instances it is likely that consulting the third party will be needed to gain their views on the disclosure. The public authority can then decide whether or not, at the time of the request, disclosure would adversely affect the third party and, if so, whether it should further consider if the exception is necessary.

The Commissioner has produced detailed guidance for public authorities that are considering applying [regulation 12\(5\)\(f\)](#).

Example

Application of the exception at regulation 12(5)(e) – *Confidentiality of commercial or industrial information.*

When applying this exception the public authority would need to establish several things, including whether the confidentiality is protecting a legitimate economic interest and whether the confidentiality will be adversely affected by the disclosure.

If it is a third party whose interests are at stake, it will not be sufficient for the public authority to speculate about possible harm to the third party's interests without some evidence that the arguments put forward actually reflect the third party's concerns. The public authority should therefore consult the third party unless it has prior knowledge of their views.

The Commissioner has produced detailed guidance for public authorities that are considering applying [regulation 12\(5\)\(e\)](#).

52. A public authority may decide to consult the third party, but the duty to weigh the public interest and decide whether to release the information remains with the public authority.
53. If the third party refuses to consent to a disclosure, this does not mean the information should automatically be withheld and would not necessarily stop the public authority releasing it. The public authority should carefully consider whether the third party's views do actually demonstrate, for example, that they would be adversely affected if the information was released.
54. The public authority can only refuse a request if an exception in regulation 12 applies. However, the third party's refusal to provide consent may be a factor that feeds into the public authority's consideration of the public interest test.
55. If the public authority has chosen to consult the third party and no response is forthcoming, it still has a duty to disclose the information (subject to the provisions of the EIR) and to reply within 20 working days. Therefore the timescale for response cannot be 'put on hold' while the public authority waits for the third party's reply.
56. If the third party is a devolved administration, please see the section in this guidance on [consultation with devolved administrations](#).

Public sector contracts

57. Public authorities often enter into contracts with non-public sector companies. Part VIII of the Code makes clear that when entering into such contracts with external companies, public authorities cannot 'contract out' their EIR obligations.

58. Therefore regardless of the terms of a contract, public authorities must disclose environmental information in response to a request unless an exception applies and the public interest favours non-disclosure.
59. The Commissioner has produced guidance on the exception for [confidentiality of commercial or industrial information \(regulation 12\(5\)\(e\)\)](#). It contains advice on contractual obligations of confidence and entering into confidentiality clauses.
60. When considering public sector contracts, public authorities should be aware of the Public Contract Regulations 2006 and refer to the Commissioner's detailed [guidance](#) on this topic.

Accepting information in confidence

61. On occasion, third parties may only be willing to give public authorities information in confidence.
62. The Code says in Part IX that public authorities should only accept environmental information from third parties in confidence if this is essential to obtain that information in connection with the exercise of their functions and it would not otherwise be provided.
63. However, if this is the case the public authority receiving the information should still clearly inform the third party that the EIR applies. This means there cannot be any absolute guarantee that the information would never be disclosed. This is because most exceptions are subject to the public interest test. In some circumstances the public interest in disclosure may outweigh the disclosure's adverse effect on the third party.
64. Information Tribunals have taken a firm line on whether third parties should be aware that public authorities are subject to the EIR and FOIA.

Example

The appeal in [Royal Borough of Greenwich v the Information & Brownie \(EA/2014/0122\)](#) concerned a request for a copy of a financial viability report commissioned to inform a variation to the section 106 agreement over a large development. A redacted copy of the report was disclosed but the remainder was withheld under regulation 12(5)(e) (confidentiality of

commercial or industrial information).

The Tribunal found on the facts of this case that the public interest favoured disclosure. The Tribunal concluded that while there was a confidentiality clause in the viability report, the Tribunal was *“unable to accept that this added any significant weight against disclosure”*. The Tribunal found that the *“basis of the confidentiality is that those supplying the information to Greenwich recognised that the information would be subject to a freedom of information regime. The obverse of a general public interest in the maintenance of confidentiality is a general public interest against disclosure. This cannot form part of the public interest balancing exercise”* (§14)

65. Public authorities should ensure that the information they are being asked to hold ‘in confidence’ is actually confidential in nature. Just because a document has the words ‘in confidence’ written on it does not necessarily mean that the contents do attract a duty of confidence.
66. If a public authority accepts environmental information in confidence, it must be for good reasons that the public authority can justify if required.

Consultation with devolved administrations

67. In some circumstances a public authority may receive a request for environmental information that was provided by, or directly concerns, a devolved administration. The Code says in Part X that the public authority should then consult that administration before releasing the information.
68. However, there are two situations where the Code says a public authority does not need to consult the devolved administration, namely:
 - The administration’s views would not affect the public authority’s decision to disclose the information – eg where no exception applies under the EIR so the information must be disclosed.
 - The consultation’s outcome may be predicted with reasonable confidence so to consult the administration would be too costly or time consuming.

69. It may be that the public authority receiving the request is a devolved administration. If so, it should similarly consult the relevant non-devolved public authority before disclosing information provided by or directly concerning that public authority, unless:
- the views would not affect the decision (as above), or
 - the consultation would be disproportionate in the circumstances.

Refusal of requests

70. Regulation 14 of the EIR sets out how public authorities should refuse to disclose environmental information. Part XI of the Code gives more guidance on this.
71. The Commissioner has produced separate detailed guidance for public authorities on [refusing a request under the EIR](#), which takes into account the Code.

Review and complaints procedure

72. Unlike FOIA, regulation 11 of the EIR obliges public authorities to provide an internal review of the request if the applicant thinks it may have failed to comply with a requirement of the EIR. Under regulation 14(5) public authorities must also include details of their complaints procedure and that of the Commissioner when refusing a request. Part XII of the Code gives public authorities guidance on how to administer their review and complaints procedures.
73. The Commissioner has produced separate detailed guidance on [internal reviews under the EIR](#). The guidance outlines public authorities' duties when dealing with a complaint about the handling of a request under the EIR. It also explains when and how to carry out an internal review.

Practical benefits of conforming to the Code

74. Keeping to the Code should result in benefits for a public authority and will help it provide good customer service.
75. Benefits of following the Code are likely to include:

- a reduced likelihood of breaching the EIR;
 - increased customer satisfaction;
 - improved public image;
 - a quicker turnaround of requests for environmental information;
 - more streamlined procedures; and
 - a saving of staff time.
76. These benefits are linked, so keeping to all aspects of the Code will produce the greatest overall benefit to public authorities.

Consequences of not conforming to the Code

77. The EIR Code of Practice forms part of the framework that provides rights of access to information.
78. Regulation 16 applies section 48 of FOIA, which concerns recommendations as to good practice and modifies it to relate to the EIR.
79. If a public authority fails to conform to the Code, the Commissioner may issue a practice recommendation. This will include any steps he thinks the public authority should follow to conform to the Code.
80. Examples of where a practice recommendation may be issued could include where a public authority has:
- failed to provide an internal review procedure or complete the internal review within the appropriate timescale;
 - failed to transfer or redirect requests appropriately; or
 - failed to consult relevant third parties.
81. A practice recommendation is given in writing. It will refer to the provisions of the Code of Practice that the Commissioner thinks the public authority has not complied with. It will be published by the Commissioner and the public authority could be named in a report to Parliament.
82. In addition, when considering complaints under section 50 of FOIA (which applies the EIR), the Commissioner can take into account observance of the Code in assessing whether the public authority has correctly discharged its statutory functions.
83. The Commissioner has a [regulatory action policy](#) that gives more detail on our approach to regulatory action. It sets out

the nature of our powers and when and how they are likely to be used, which includes practice recommendations.

Other considerations

84. The EIR does not cover records management matters. However, the FOIA section 46 Code of Practice provides guidance on records management.
85. The [section 46 Code of Practice](#) applies only to public authorities covered by FOIA. But the Commissioner recommends that bodies that fall within the definition of a public authority only for the purposes of EIR also observe its requirements, particularly for documents that may become public records.

More information

86. This guidance relates only to EIR. If the information is not environmental, public authorities need to instead consider the FOIA and specifically the Commissioner's guidance on the [section 45 Code of Practice](#).
87. If you want to know more about the EIR exceptions or the public interest test, additional guidance is available on the Commissioner's [guidance pages](#).
88. This guidance has been developed drawing on ICO experience. Because of this it may give more detail on issues that are often referred to the Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Commissioner, Tribunals and courts.
89. It is a guide to our general recommended approach. Individual cases will always be decided on their own circumstances.
90. If you want more information about this or any other aspect of the EIR, please [contact us](#), or visit our website at www.ico.org.uk.