

EIRS Guidance Series

Handling requests for environmental information



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Glossary and abbreviations

Term used	Explanation
The Commissioner	The Scottish Information Commissioner
EIRS	Environmental Information (Scotland) Regulations 2004
FOISA	Freedom of Information (Scotland) Act 2002
SIC	The Scottish Information Commissioner, staff of SIC (depends on context)
Requester/applicant	A person making a request for information

EIRs Guidance Series

1. This is the fifth part of a series of guidance on the EIRs. The full series covers the following:

- Introduction to the EIRs¹
- What is environmental information?²
- Which bodies are covered by the EIRs?³
- What do the EIRs require Scottish public authorities to do?⁴
- Handling requests for environmental information
- An overview of the exceptions⁵
- Differences between the EIRs and FOISA⁶

2. See **Appendix 1: Resources** for a link to all of the guidance.

Duty to make environmental information available

... a Scottish public authority that holds environmental information shall make it available when requested to do so (regulation 5)

3. Where a public authority holds environmental information, it must make it available when requested to do so. This is subject to regulations 6 to 12, which allow authorities to charge for information, withhold information in certain cases, etc.
4. The EIRs do not specify what form a request should take. This is different from FOISA, which states that a request for information must be in writing or in another form capable of being used for subsequent reference (section 8).
5. This means that a request in any form (verbal, written or recorded) will be a valid request under the EIRs.
6. Public authorities cannot require requesters to put a request in writing. However, if a request is made verbally, the authority should write down the request, date it, and then confirm with the requester whether this is an accurate record of their request. It is the date on which the authority receives the verbal request, and not the date of confirmation, that will count as the date of receipt.
7. Anyone or any organisation, irrespective of geographical location, can ask for environmental information.
8. Requesters don't need to tell authorities why they want the information.

¹ http://www.itspublicknowledge.info/Law/EIRs/EIRs_Introduction.aspx

² <http://www.itspublicknowledge.info/Law/EIRs/WhatIsEnvironmentalInformation.aspx>

³ <http://www.itspublicknowledge.info/Law/EIRs/EIRsCoverage.aspx>

⁴ <http://www.itspublicknowledge.info/Law/EIRs/EIRsObligations.aspx>

⁵ <http://www.itspublicknowledge.info/Law/EIRs/EIRsExceptions.aspx>

⁶ <http://www.itspublicknowledge.info/Law/EIRs/EIRsDifferencesEIRSandFOISA.aspx>

Holding information

... environmental information is held by a Scottish public authority if it is –
(a) in its possession and it has been produced or received by that authority; or
(b) held by another person on that authority's behalf,
and, in either case, it has not been supplied by a Minister of the Crown or department of the Government of the United Kingdom and held in confidence. (regulation 2(2))

9. The EIRs apply to environmental information held by a Scottish public authority. A Scottish public authority “holds” information for the purposes of the EIRs if the information is:
 - (i) in its possession and has been produced or received by that authority; or
 - (ii) held by another person on that authority's behalf (e.g. by consultants, private companies or in archives).
10. Where an authority does not hold information, it should apply the exception in regulation 10(4)(a).
11. Note that regulation 2(2) makes it clear that information is not held by a Scottish public authority for the purposes of the EIRs if the information:
 - (i) was supplied by a Minister of the Crown or by a department of the UK Government and
 - (ii) it holds the information in confidence.
12. Although the requester won't be able to access the information under the (Scottish) EIRs, they can make a new request to the relevant Minister or Government department under the (UK) Environmental Information Regulations 2004. The public authority refusing the request should tell the requester who to make their new request to.
13. Regulation 2(2) is very similar to section 3(2)(a)(ii) of FOISA, which is looked at in more detail in the Commissioner's guidance on the exemption in section 28 of FOISA (see **Appendix 1: Resources** for a link to the guidance).

Form and format of information

Where an applicant requests that environmental information be made available in a particular form or format, a Scottish public authority shall comply with that request unless –
(a) it is reasonable for it to make the information available in another form or format; or
(b) the information is already publicly available and easily accessible to the applicant in another form or format. (regulation 6)

14. If a requester asks for information in a particular form or format, the public authority must comply unless there is another reasonable approach to supplying the information.

15. Authorities should remember their duty to advise and assist when applying regulation 6. Some IT users might not be able to read attachments in certain formats and some members of the public may prefer paper to electronic copies. Authorities should also bear in mind their duties under the Equality Act 2010.

Transfer of request to another authority

Where a Scottish public authority ... does not hold that information but believes that another public authority holds the information requested then it shall either –

- (a) transfer the request to the other authority; or
- (b) supply the applicant with the name and address of that other authority and inform the applicant accordingly ... (regulation 14)

16. Unlike FOISA, the EIRs allow an authority to transfer a request to another authority, but only if the authority does not hold the information.
17. If the authority believes that some or all of the information requested is held by another Scottish public authority, the authority should consider how best to help the requester. The EIRs give authorities two options:
 - (i) The original request can be transferred to the other authority. Before doing this, the authority which received the request should check that the other authority actually holds the information.
 - (ii) The authority can give the requester the name and address of the other authority it believes holds the information to allow the requester to make the request to that authority. In many cases, this will be the preferable option, as the person who made the request might not want to have the request to be transferred to another authority, particularly where personal data (which would be protected under the General Data Protection Regulation/Data Protection Act 2018) may be concerned.
18. Whichever option the authority chooses, it must issue a refusal letter within 20 working days of receipt of the request to explain that it does not hold the information (and apply the exception in regulation 10(4)(a)).

Records transferred to the Keeper

19. Regulation 15 of the EIRs makes special provisions for environmental information contained in a record which an authority has transferred to the Keeper of the Records of Scotland.
20. Where the Keeper receives a request for a record which has not been designated as open for public access, the Keeper must send a copy of the request to the authority which transferred it to the Keeper as soon as possible. It is up to the authority to decide whether the information can be disclosed.
21. If the record has already been designated as “open”, the Keeper may make it available without reference to the authority which transferred the record.

Extension of time

22. Regulation 7(1) of the EIRs allows an authority to extend the time for complying with a request by up to 20 working days if the volume and complexity of the information covered by the request makes it impracticable to comply with the request within the original 20 working days.
23. If an authority wants to do this, it must notify the requester as soon as possible, and no later than 20 working days from the receipt of the request. This notice must be in writing and must give the authority's reasons for considering the information to be both voluminous and complex. The notice must also tell the requester of their rights to require the authority to review its decision to extend the time period, and of their rights to appeal to the Commissioner to investigate whether the authority was entitled to extend the time limit to 40 working days.

Refusal of request

24. An authority can refuse to make environmental information available if an exception in regulation 10 applies and, in all the circumstances, the public interest in disclosing the information is outweighed by the public interest in maintaining the exception. An authority may also refuse to make personal data available in some cases (regulation 11).
25. The exceptions in regulation 10 must be interpreted in a restrictive way and with a presumption in favour of disclosure.
26. It is important to note that environmental information which relates to information on emissions has a special status under the EIRs: the exceptions in regulations 10(5)(d) to (g) can't be used to withhold information on emissions.
27. Where a request for environmental information covers some information which can be disclosed and other information which the authority believes is subject to an exception, the authority must disclose the information which is not subject to any exceptions, unless the authority is not reasonably capable of separating that information out (regulation 10(7)).
28. Where the public authority intends to refuse all or part of a request, or refuses to make the information available in a particular format, the refusal notice must:
 - (i) be in writing;
 - (ii) state clearly the reasons for refusal, citing the relevant exception(s);
 - (iii) state the basis for applying any exception (including regulation 11), if it would not otherwise be apparent;
 - (iv) where appropriate, specify how the public authority reached its conclusion with respect to the public interest test contained in regulation 10(1)(b);
 - (v) where environmental information is incomplete and the exception in regulation 10(4)(d) is relied on, state the time by which the Scottish public authority considers that the information will be complete;
 - (vi) provide details of the provisions for a review by the authority and subsequent appeal to the Commissioner and the Court of Session (regulation 13).

Appendices

Appendix 1: Resources

Paragraph	Resource	Link
2	Introduction to the EIRs	http://www.itspublicknowledge.info/Law/EIRs/EIRs_Introduction.aspx
2	What is environmental information?	http://www.itspublicknowledge.info/Law/EIRs/WhatIsEnvironmentalInformation.aspx
2	Which bodies are covered by the EIRs?	http://www.itspublicknowledge.info/Law/EIRs/EIRsCoverage.aspx
2	What do the EIRs require Scottish public authorities to do?	http://www.itspublicknowledge.info/Law/EIRs/EIRsObligations.aspx
2	The exceptions	http://www.itspublicknowledge.info/Law/EIRs/EIRsExceptions.aspx
2	Differences between the EIRs and FOISA	http://www.itspublicknowledge.info/Law/EIRs/EIRsDifferencesEIRSandFOISA.aspx
13	Commissioner's guidance on section 28 of FOISA (Relations within the UK)	http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section28/Section28.aspx

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