

Environmental Information (Scotland) Regulations 2004

Guidance for bodies not covered by the Freedom of Information (Scotland) Act 2002

How to handle requests for environmental information



Scottish Information
Commissioner

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Glossary and abbreviations

Term used	Explanation
EIRs	Environmental Information (Scotland) Regulations 2004
The Directive	Directive 2003/4/EC on public access to environmental information
FOISA	Freedom of Information (Scotland) Act 2002
The Commissioner, SIC	The Scottish Information Commissioner
Section 60 Code	The Scottish Ministers' Code of Practice on the discharge of functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004

Cross-referenced VC documents (for internal use)

VC No	VC name
6291	C2 EIRs Guidance The Public Interest Test in the EIRs
12643	C2 EIRs Guidance: What is environmental information?
12652	C2 EIRs Guidance: Which bodies are covered by the EIRs?
18529	C2 The Scottish Information Commissioner's investigations: a guide for Scottish public authorities
21635	C2 Fees and excessive cost of compliance: Guidance on how to apply FOISA sections 9, 12 & 13; EIRs regulation 8
21983	S38 briefing – last updated Nov 11 CURRENT – UNDER REVIEW
31746	C2 FOISA/EIRs Guidance: Vexatious, repeated or manifestly unreasonable requests
44845	C2 Investigations Handbook
48736	C2 Self-assessment toolkit Module 2: Searching for, locating and retrieving information
48808	C2 Model Publication Scheme 2015
48996	C2 Self-assessment toolkit Module 1: Responding on time
54710	C2 Self-assessment toolkit Module 3: Advice and assistance

The Environmental Information (Scotland) Regulations 2004

Introduction

1. The Environmental Information (Scotland) Regulations (the EIRs) give the public the right to access environmental information held by “Scottish public authorities”. The definition of “Scottish public authority” in the EIRs is different from the definition in the Freedom of Information (Scotland) Act 2002 (FOISA). As a result, there are some bodies (such as housing associations) which need to comply with the EIRs, even though they are not required to comply with FOISA.
2. **This guidance is aimed at those bodies which only need to comply with the EIRs.**
3. The EIRs are based on EU Directive 2003/4/EC on public access to environmental information. The Directive recognises that everyone has a right to live in a healthy environment and that, in order for the public to assert their right to live in a healthy environment, they must have full access to information on the environment.
4. The Directive itself is based on a United Nations convention, the Aarhus Convention. The UN has published a helpful (if detailed) Implementation Guide, which can come in useful when interpreting the EIRs. See **Appendix 1 – Resources** for a link to the guide.
5. This guidance covers the definition of environmental information and explains how to recognise a request under the EIRs. It gives advice on responding to requests (including the duty to advise and assist) and tells you how long you have to respond. The guidance also tells you what you need to do if the requester is unhappy with your response.
6. In the Appendices, you will find links to more detailed guidance on the issues raised in this document. There is also a compliance checklist to help you make sure you have everything in place you need to comply with the EIRs.
7. Don't forget that the Commissioner offers a (free) enquiries service to bodies which are covered by the EIRs, as well as to people who want to make a request under the EIRs. The Commissioner's contact details are at the end of this document.

What you need to do to comply with the EIRs

8. The EIRs impose a number of different duties on you. These are all covered in this guidance, although not all are covered in great detail.
9. The EIRs require you to:
 - (i) make environmental information available to any person who requests it within 20 working days (or, where the request is voluminous and complex, within 40 working days);
 - (ii) publish a schedule of charges and information on the circumstances in which a fee may be charged, waived or required to be paid in advance;
 - (iii) provide advice and assistance to someone who has made, or wishes to make, a request for environmental information;

- (iv) refuse to make environmental information available only if an exception applies and give reasons for withholding the information and details of the mechanisms for review and appeal;
- (v) where requested, carry out a review of a decision not to make environmental information available; and
- (vi) actively disseminate information, particularly by electronic means.

Definitions

Who is covered by the EIRs?

10. The bodies covered by the EIRs are known as “Scottish public authorities.” There is a definition of “Scottish public authority” in regulation 2(1) of the EIRs.
11. Bodies subject to FOISA are automatically subject to the EIRs. However, the definition of “Scottish public authority” in the EIRs is based on the definition in the Directive and is wider than the definition in FOISA. This means that, even if you are not subject to FOISA, you might be covered by the EIRs if:
 - (i) you are a Scottish public authority with mixed functions or no reserved functions within the meaning of the Scotland Act 1998 or
 - (ii) you are not a public body or a holder of a public office but you are *under the control of* a public authority *and* you
 - (a) have public responsibilities relating to the environment
 - (b) exercise functions of a public nature relating to the environment or
 - (c) provide public services relating to the environment.
12. In deciding whether a body is under the control of a public authority, the Commissioner will take account of the following types of factors:
 - (i) the amount of regulatory control
 - (ii) the contractual relationship between the bodies
 - (iii) accountability
 - (iv) legal duties
13. The level of control should be sufficient to exert a significant or decisive influence, effect or direction on the body.
14. **Appendix 1 – Resources** contains a links to a decision issued by the Commissioner where she concluded that a housing association, which was not subject to FOISA, was subject to the EIRs.
15. Also see **Appendix 1 – Resources** for a link to more detailed guidance from the Commissioner on which bodies are covered by the EIRs.

What is environmental information?

16. “Environmental information” is defined in regulation 2(1) of the EIRs. The definition is set out in full in **Appendix 2** to this guidance. It is a wide definition, and includes information on:
 - (i) The state of the elements of the environment (e.g. air and atmosphere; water; soil; landscape and natural sites)
 - (ii) Factors affecting the elements of the environment (e.g. energy; noise; radiation or waste)

- (iii) Measures and activities affecting the elements of the environment or factors affecting the environment (e.g. policies; legislation; plans; environmental agreements)
- (iv) Reports on the implementation of environmental legislation
- (v) Cost benefit and other economic analyses taken into account in framing measures and activities affecting the environment
- (vi) The state of human health and the state of cultural sites and built structures, provided that they are affected by the state of the elements of the environment.

17. Here are some examples of where the Commissioner has found the information to be environmental information:

The funding of the Borders Railway Project (Decision 023/2014)	A development sustainability statement (Decision 113/2013)
Building warrants (Decision 153/2015)	Planning application (Decision 051/2014)
Statutory repairs notice (Decision 093/2012)	Communications about High Speed Rail (Decision 090/2012)
Contracts relating to the Edinburgh Tram project (Decision 035/2011)	Draft Fife Core Path Plan (Decision 014/2011)
Sewer installation (Decision 005/2011)	Tenders for the Scottish National Arena and Velodrome (Decision 107/2010)
Flood information (Decision 089/2009)	Fish escapes in Loch Lochy (Decision 071/2009)
Introduction of Giant Pandas to Edinburgh Zoo (Decision 051/2009)	Nuclear waste (Decision 044/2009)
Gull egg removal (Decision 119/2008)	Legal advice given to SEPA (Decision 069/2008)

18. See **Appendix 1 – Resources** for a link to more detailed guidance from the Commissioner on the definition of environmental information.

What does “held” mean?

- 19. Regulation 5 of the EIRs requires you to make available the environmental information you hold (subject to other provisions in the EIRs).
- 20. You hold information for the purposes of the EIRs (regulation 2(2)(a) and (b)) if it is:
 - (i) in your possession and has been produced or received by you; or
 - (ii) held by someone else on your behalf.
- 21. You will *not* hold information for the purposes of the EIRs (regulation 2(2)(c)) if it was supplied to you in confidence by a Minister of the Crown or by a department of the UK Government. If this is the case, it is a good idea to make sure that your records support this

as the Commissioner would ask for evidence if you refused to disclose information and someone appealed to her.

22. The EIRs only apply to the information you hold when you receive a request.
23. You do not have to prepare a policy just to respond to a request if you do not hold it. For example, if a requester asks for a copy of your internal policy on a particular matter, but you don't have such a policy, you aren't expected to write one just so that you can respond to the request. The correct response would be to tell the requester that you don't hold the information.
24. If a requester asks for a copy of a report which you don't actually have, but which you know another body has, you don't need to obtain a copy of the report from the other body. The correct response would be to tell the requester that you don't hold the report, but to offer to transfer the request to the other body or give the requester the contact details for the authority.
25. More guidance on transferring requests can be found below – see paragraph 76.

Responding to a request

Recognising a request for environmental information

26. Neither the EIRs (nor the Directive on which they are based) say anything about the format of a request. This means that *any request, in any form, whether it is made verbally (including over the phone or left on an answering machine) or in writing can be covered by the EIRs, provided that the request is for environmental information.*
27. This means that you can't insist a requester puts their request in writing. It is a good idea to write down the request, date it and ask the requester to confirm whether it is an accurate record of their request.
28. Anyone can make a request for environmental information, regardless of whether they live in Scotland or elsewhere. Requests can be made by companies, etc. as well as individuals.
29. Requesters don't have to tell you why they want the information or what they plan to do with it. You can't refuse to respond to the request just because they haven't told you.
30. Remember, when you respond to an information request, you are not only giving that information to one person, but effectively, making it public. This means that your reasons for withholding or disclosing information are based on disclosing it into the public domain.

Clarifying the request

31. If it's not clear what information the requester is asking for, you must ask the requester as soon as possible (and no later than 20 working days after receiving the request) to provide more particulars about their request (regulation 9(2)). It is a good idea to do this as soon as you can after receiving the request.
32. This means that, where a request is unclear, because the requester hasn't described the information in a way which would allow you to identify it or locate it, or if the request is ambiguous, you should help the requester to describe the information more clearly.
33. You should keep a copy of any clarification the requester gives you. The date you receive the clarification is deemed to be the date you receive the request, not the date when you originally received the request.

The format of information

34. If a requester asks you to make information available to them in a particular form or format, you must comply with that request unless –
 - (i) it is reasonable for you to make the information available in another form or format; or
 - (ii) the information is already publicly available and easily accessible to the requester in another form or format (regulation 6(1)).
35. If, for example, a requester asks you to send them a hard copy of a report you already make available online, and you know that the requester can easily access the report online, you won't have to provide the requester with a hard copy.

36. When applying regulation 6(1), it's important to remember your duties under the Equality Act 2010.

Advice and assistance

37. Regulation 9 of the EIRs is very important. It requires you to provide reasonable advice and assistance to anyone who has made an information request or who would like to make an information request to you.
38. The Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the EIRs contains guidance on the type of advice and assistance that should be given to requesters and would-be requesters (see **Appendix 1 – Resources** for a link to the Code).
39. If you comply with the Code, you will be presumed to have complied with your duty to provide advice and assistance (regulation 9(3)). The Commissioner has issued a self-assessment toolkit on advice and assistance – see **Appendix 1 – Resources**.

Overview of steps in responding to a request

40. Once you are satisfied that you have a request for environmental information, and you understand what it is, you must respond to it within statutory timescales - see paragraph 42 et seq.
41. You will need to consider the following steps, all within the 20 (or extended) working days allowed. The remainder of this guidance gives you more information.
- (i) What information do you hold? You may find it helpful to produce a schedule of the information you hold covered by a request. The Commissioner has produced a template you can download from her website – See **Appendix 1 – Resources**. Using a schedule helps you keep track of the information and would be required by the Commissioner if the request is appealed.
 - (ii) Do charges apply? If so, is a fees notice required, or will you treat the request as manifestly unreasonable?
 - (iii) Is the request manifestly unreasonable for another reason?
 - (iv) Assuming a response is required:
 - (a) Is any or all of the information excepted (i.e. there is a reason why you could withhold it)? You need to be clear about why information is excepted because if it isn't, you cannot withhold it.
 - (b) If it is excepted, does the public interest favour disclosure or withholding? If it favours disclosure, you cannot withhold it.
- It is a good idea to have a record of your reasoning in relation to each of these steps. This will help the reviewer if you receive a request for a review, and help you explain to the Commissioner why you took the decision you did.
- (v) Draft and issue the response. This includes preparing information for disclosure and any redactions (blacking out) of information needed.

How long do I have to respond?

42. You should respond to a request as soon as possible, and within 20 working days after receiving the request.

What is a working day?

43. “Working days” exclude weekends or official bank holidays. (See **Appendix 1 – Resources** for a list of the official bank holidays.)
44. When calculating the 20 working days, the first working day after you receive the request counts as day 1. So, if you receive a request on a Tuesday, day 1 will be Wednesday. If you receive a request on a Friday, day 1 will be the following Monday.
45. In limited cases, you can extend the timescale for responding by up to a further 20 working days. You can only do this if the volume *and* complexity of the request makes it impracticable for you to respond within 20 working days (regulation 9).
46. If you decide to extend the timescale, you must write to the requester to tell them what you’re doing before the original 20 working day period is up. If you do this, you must tell them of their right to ask you to reconsider the extension – see paragraphs 137 to 142.

Late responses and failure to respond

47. Having a time limit set down by law for responding to information requests is important. It lets requesters know that their requests will be answered within a set time limit. The deadline also provides a framework you can use to help you put suitable systems and administrative arrangements in place to allow you to respond on time.
48. If you fail to respond to requests, or fail to respond on time, you are effectively denying people their rights – as well as breaching the legislation. Access to information is often time-sensitive for the requester. Giving a late response, or failing to respond at all, can be both stressful and damaging to requesters. It also undermines trust and confidence in you and in the EIRs.
49. It’s important to remember that the 20 (or, in limited cases, 40) working days set down by the EIRs is the final date for complying. The EIRs expect you to respond to requests as soon as possible. It’s important that you start thinking about how to respond to a request when you receive it. If you leave a request until nearer the deadline, you might struggle to find time to locate the information you need, or to consult with a third party (e.g. a contractor) as to whether the information can be disclosed.
50. For these reasons, the Commissioner has issued a self-assessment toolkit which will help you respond to requests on time. See **Appendix 1 – Resources** for a link to the toolkit.

Fees

What you can charge for

51. The EIRs allow you to charge a “reasonable amount” for making information available in response to an information request (regulation 8(3)).
52. You can only charge if you have published (and made available to requesters) a schedule of fees showing how much you will charge (regulation 8(8) and under what circumstances).

53. The fee you charge must not exceed the cost to you of “producing” the information. This means that indirect costs must not be passed on to the requester and that the fees must not create a profit.
54. You are entitled to charge for the staff time taken in locating and retrieving the information in response to a request, as well as for the costs of supplying the information (e.g. photocopying and postage).
55. When you’re thinking about what information you can make available, you might want to think about whether the information is subject to any exceptions (see paragraphs 133 to 141). You can’t charge for the time spent thinking about whether to apply an exception but you can charge for the time it would take to redact a document before it is disclosed.

Example

- You receive a request for 50 page report. You are happy that the report can be disclosed, provided that the names and addresses of tenants are redacted.
- You cannot charge for the time it takes you to decide whether to withhold the information.
- You can charge for the time it takes you to go through the document and redact all of the tenants’ names and addresses.

56. You are not allowed to charge if you don’t hold the information you’ve been asked for, even if you’ve spent time trying searching for it. Similarly, you can’t make a charge if you decide that the information is subject to one of the exceptions in the EIRs.
57. If the requester thinks that the charge is too high, they can ask you to reconsider it (see paragraphs 137 to 142 below). They may also ask the Commissioner to decide whether the fee is too high.

What makes a charge reasonable?

58. In setting a charge, you should:
 - (i) consider fees charged by other, comparable bodies
 - (ii) take account of the actual costs and what you can do to minimise them, for example emailing a document will be cheaper than sending it by post
59. In setting a charge, you should not:
 - (i) set the costs so high that they dissuade people from making requests
 - (ii) set fees regardless of the size of the document. Setting the same fee for providing a copy of any report will not be reasonable if you charge the same amount for a five page report as you do for a 100 page report.
 - (iii) take account of how the requester is going to use the information.
60. Further guidance on charging under the EIRs is available on the Commissioner’s website – see **Appendix 1 – Resources**.

Fees notices and timescales

61. If you issue a fees notice, the 20 working day clock (or 40 if you have extended it) stops until the fees notice has been paid. A requester has 60 days to pay the fee.
62. If the fee is paid, and you later realise that it cost you less to provide the information than you originally thought, you must refund the requester.

Searching for and locating information

63. In order to comply with the EIRs, you need to be able to identify what information you hold and where you hold it. Good records management is therefore essential for the effective and efficient answering of information requests. The cost of answering a request in terms of time and resources will often be determined by how good your records management is. If you have good records management, you will be able to identify and locate information, allowing responses to be answered quickly and with ease.
64. The Scottish Ministers have published a Code of Practice on Records Management which covers bodies which are subject to the EIRs. The Code describes the practice which the Ministers consider should be followed in connection with the keeping, management and destruction of records. See **Appendix 1 – Resources** for a link to the Code.
65. In addition, the Commissioner has issued a toolkit which will help you assess your ability to conduct complete, reliable, thorough and proportionate searches to identify and locate the environmental information you hold in response to an information request. See **Appendix 1 – Resources** for a link to the toolkit.

The response

66. The EIRs work on the presumption that environmental information will be made available on request. However, you can refuse to provide environmental information if an exception applies under regulation 10 or where the information is personal data and regulation 11 applies.
67. Where you want to refuse all or part of a request, you must tell the requester *in writing*. The notice must:
 - (i) state the reasons for refusal (and must refer to the relevant exception(s));
 - (ii) state the basis for applying the exception (including regulation 11), if it is not otherwise apparent and
 - (iii) where appropriate, tell the requester how you came to your conclusion in relation to the public interest test.
68. Unless you provide the information in full, you must tell the requester of their right to ask you to carry out a review and to subsequently appeal to the Commissioner. (Even if you provide the information in full, it is good practice to give this information to the requester - see the Section 60 Code referred to in paragraph 38 above.)
69. If you use the following wording your response will be compliant with the need to inform the requester of their right to review:

If you are unhappy with this response to your request, you can ask us to carry out an internal review by writing to [include name and address] or by emailing [insert

email address]. You should explain why you believe that our response does not comply with the Environmental Information (Scotland) Regulations 2004.

Your request must be made within 40 working days (this excludes weekends and bank holidays) of receiving this response. We will reply within 20 working days of receipt.

If you are not satisfied with the outcome of the review, you then have the right to appeal to the Scottish Information Commissioner. More information about your rights and about the role of the Commissioner can be found on the Commissioner's website: www.itspublicknowledge.info.

The exceptions

Applying an exception under the EIRs

70. The EIRs allow you to refuse to make information available in some cases. These are known as “the exceptions”. All of the exceptions must be applied in a restrictive way and you must apply a presumption in favour of disclosure (regulation 10(2)). In more everyday language, this means that your starting point is that you will disclose the information asked for and that there would have to be really good strong reasons to apply the exceptions.
71. There are two categories of exception in regulation 10:
- (i) “class” exceptions, which apply to a particular type of information; and
 - (ii) “content” exceptions, which can only be applied if disclosure of the information would, or would be likely to, cause substantial prejudice to a particular interest.
72. Further guidance on each of the exceptions is available on the Commissioner’s website. See **Appendix 1 – Resources** for a link to the guidance.
73. All of the decisions issued by the Commissioner are published on her website. These decisions are searchable by the exceptions. See **Appendix 1 – Resources** for a link to the Commissioner’s decisions database.

“Class” exceptions

Regulation 10(4)(a) - Information not held

74. This allows you to apply an exception to information you don’t “hold” (see paragraphs 19 to 22 above).
75. Even if you don’t hold the information, you must still give the requester reasonable advice and assistance. This might involve giving the requester an idea of the information that you do hold that might help them with their enquiry, or an explanation about why you don’t hold it.
76. Additionally, if you believe another public authority holds the information, you must either transfer the request to that authority or give the requester the name and address of the other public authority at the same time as issuing a formal response telling them that you don’t hold the information.
77. Because of data protection concerns, the safest approach is to give the requester the name and address of the other authority rather than pass the request on to another body. There is helpful guidance on this point in the Section 60 Code referred to in paragraph 38 above.

The public interest test

78. This exception is subject to the public interest test (see paragraphs 125 to 130). If you don’t hold the information, it might seem strange to have to go on to consider the public interest test. It is always possible that you will have the information in your possession, but that you don’t hold it for the purposes of the EIRs (again, see paragraphs 19 to 22). In most cases, however, applying the public interest test will be an academic exercise. See **Appendix 1 - Resources** for an example of how the Commissioner deals with this in practice in decisions.

Regulation 10(4)(b) - Manifestly unreasonable requests

79. You can refuse to make information available if the request is “manifestly unreasonable”. There is no single formula or definitive set of criteria as to what is manifestly unreasonable. Each request needs to be considered on its own merits. The following factors are helpful in helping decide whether a request (which may be the latest in a series of requests or other related correspondence) is manifestly unreasonable:

- (i) it would impose a significant burden on you
- (ii) it does not have a serious purpose or value
- (iii) it is designed to cause disruption or annoyance
- (iv) it has the effect of harassing you
- (v) it would otherwise, in the opinion of a reasonable person, be considered the manifestly unreasonable or disproportionate.

80. Each of these factors is considered in more detail in guidance issued by the Commissioner – see **Appendix 1 – Resources**.

The public interest test

81. This exception is subject to the public interest test (see paragraphs 125 to 130).

Regulation 10(4)(c) - Formulated in too general a manner

82. You can refuse a request for information if it is formulated in too general a manner, provided you have already complied with your duty under regulation 9. This means, before refusing a request under regulation 10(4)(c), you must contact the applicant to find out if the request can be clarified (see paragraphs 31 to 33).

The public interest test

83. This exception is subject to the public interest test (see paragraphs see paragraphs 125 to 130).

Regulation 10(4)(d) - Material which is still in the course of completion, unfinished documents or incomplete data

Material which is still in the course of completion/unfinished documents

84. “In the course of completion” suggests that a document will have more work done on it within a reasonable time-frame. Just because a document is in draft form, or unfinished, does not mean that it will automatically be covered by this exception.

Incomplete data

85. Whether information can be categorised as “incomplete data” will depend on the circumstances. Data which is part of routine monitoring should not be regarded as part of an ongoing unfinished set, but should normally be disclosed as soon as practicable after collection. If you rely on the exception in regulation 10(4)(d), you must (regulation 13(d)) tell the requester when you think the information will be finished or completed.

86. See **Appendix 1 – Resources** for examples of the Commissioner’s approach to this exception.

The public interest test

87. This exception is subject to the public interest test (see paragraphs 125 to 130).

Regulation 10(4)(e) - Internal Communications

88. This exception allows you to refuse to disclose your internal communications. This exception is potentially very wide. It can include a wide range of documents, including internal emails, draft letters to an external body, and file notes prepared for internal use.

89. It is possible (although rare) for communications between two or more separate bodies to be treated as “internal communications” for the purposes of regulation 10(4)(e). This will depend on things like the nature and context of particular relationship between the two bodies and the nature of the communication. See **Appendix 1 – Resources** for an example of a case where the Commissioner agreed that communications between two separate bodies were “internal.”

The public interest test

90. While this exception is potentially very wide, this exception is subject to the public interest test (see paragraphs 125 to 130). In many cases the public interest will favour making the information available.

“Content” exceptions

91. Content exceptions are contained in regulation 10(5). These only apply if disclosing the information would, or would be likely to, cause substantial prejudice to the interest covered by the exception.

92. You should be prepared to demonstrate your reasoning in the event of an appeal to the Commissioner.

Regulation 10(5)(a) – Substantial prejudice to international relations, defence, national security or public safety

International relations

93. This could include confidential information obtained from (or relating to) a foreign state, an international organisation or overseas territory, if disclosure might compromise any future co-operation with the UK in areas of vital interests to the UK.

Defence

94. This may include information regarding military establishments, military exercises or the nature of military assets.

National security or public safety

95. This may include information on the protection of critical national infrastructures such as water supply.

“Neither confirm nor deny”

96. You can refuse to reveal whether you hold information (whether or not you hold it) if:

- (i) revealing whether you hold it would involve disclosing information which would, or would be likely to, prejudice substantially any of the interests covered by regulation 10(5)(a) and

- (ii) it would not be in the public interest to reveal whether you hold the information (regulation 10(8)).

The public interest test

97. This exception is subject to the public interest test (see paragraphs 125 to 130). See **Appendix 1 - Resources** for an example of a case where the Commissioner had to balance the public interest in disclosure of the information against the public interest in withholding it.

Regulation 10(5)(b) – Substantial prejudice to the course of justice, etc.

98. A request for environmental information may be refused where the disclosure of the information would, or would be likely to, substantially prejudice:

- (i) the course of justice, including law enforcement;
- (ii) the ability of a person to receive a fair trial;
- (iii) the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature.

99. This exception applies to investigations or enquiries conducted by any level of government, or by any institution or public authority (local, regional, national or international). It could include any information which, if disclosed, could prejudice the prevention, investigation or detection of a crime, or the apprehension or prosecution of offenders.

100. This particular exception will cover information which is covered by legal professional privilege, particularly where a public authority is or is likely to be involved in litigation. The Commissioner has in the past also accepted legal professional privilege under regulation 10(5)(d) (see paragraphs 105 to 107).

The public interest test

101. This exception is subject to the public interest test (see paragraphs 125 to 130).

Regulation 10(5)(c) - Substantial prejudice to intellectual property rights

102. This exception protects patents, trademarks, copyright, etc. The exception should only be applied where there is a real risk that the disclosure (or further dissemination after disclosure) would, or would be likely to, seriously undermine the rights concerned. If the information would enjoy protection, even after disclosure, from the Copyright Designs and Patents Act, for instance, the case against disclosure would be considerably weaker.

103. Be prepared to explain and demonstrate to the Commissioner that any claimed risk is real, and not just a hypothetical fear or assumption.

The public interest test

104. This exception is subject to the public interest test (see paragraphs 125 to 130).

Regulation 10(5)(d) - Substantial prejudice to the confidentiality of the proceedings of any public authority where such confidentiality is provided by law

105. This can apply to information relating to a public authority's proceedings where the proceedings are considered to be confidential. The term "proceedings" will include a range of investigative, regulatory and administrative/governance processes and other such activities.

106. In some cases where this exception applies, there may be a specific statutory provision prohibiting the information from being disclosed. There may also be cases where the common law of confidence will protect the confidentiality of the proceedings.

The public interest test

107. This exception is subject to the public interest test (see paragraphs 125 to 130).

Regulation 10(5)(e) - Substantial prejudice to the confidentiality of commercial or industrial information

108. Confidentiality may arise either from explicit statutory restrictions on disclosure or under common law of confidentiality. The information covered by this exception will include a range of commercially sensitive information such as trade secrets, information supplied by contractors, information supplied as part of a tendering or procurement process and information held by regulators.

109. You should consider the following questions before applying the exception:

- (i) Is the information publicly available? If so, this exception is very unlikely to apply.
- (ii) Is the information commercial or industrial in nature?
- (iii) Does a legally-binding duty of confidence exist in relation to the information - express or implied?
- (iv) Does this duty of confidence protect a "legitimate economic interest"?
- (v) Would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?

110. Confidentiality may also be based on the common law of confidence. This may be acknowledged in a contract, although merely stating that certain information is confidential within a contract does not necessarily make it so.

111. Generally the protection of information under this exception should be limited to the minimum time necessary to safeguard the commercial or industrial interest in question.

The public interest test

112. This exception is subject to the public interest test (see paragraphs 125 to 130).

Regulation 10(5)(f) - Substantial prejudice to the interests of the individual providing the information

113. This exception applies where information was supplied on a voluntary basis in the expectation that it would not be disclosed to a third party and where the supplier has not consented to disclosure. This could include information collected from members of the public in research or surveys, or privately owned information which has been deposited in a public record office or archive.

114. The purpose of this exception is to ensure, for example, that bodies continue to pass information voluntarily to their regulators when collecting statistical data and conducting sample surveys. Making such information available to the public could possibly inhibit open and constructive discussions between environmental control authorities and industry.

115. This exception only applies where:

- (i) the environmental information was provided voluntarily, i.e. the supplier was not under, and could not have been under, any legal obligation to supply it to the Scottish public authority;
- (ii) there are no other circumstances that entitle the Scottish public authority to disclose it; AND
- (iii) the supplier has not consented to its disclosure.

116. The harm test also applies to this exception, so the exception only applies where disclosure of the information would, or would be likely to, substantially prejudice the interests of the person who provided the information.

117. If a Scottish public authority is able to require the information to be provided under statutory obligation (whether used or not) then that information will not fall within this exception.

The public interest test

118. This exception is subject to the public interest test (see paragraphs 125 to 130).

Regulation 10(5)(g) - Substantial prejudice to the protection of the environment

119. A Scottish public authority may refuse to make information available in order to protect the environment, e.g. the nesting location of rare birds. The ultimate aim of the EIRs is to increase the protection of the environment by ensuring greater access to environmental information. It would clearly be inconsistent with the purpose of the EIRs if making information available led to the environment being damaged. See **Appendix 1 – Resources** for an example of a decision issued by the Commissioner which considers this particular exception.

The public interest test

120. This exception is subject to the public interest test (see paragraphs 125 to 130).

Personal Data – regulation 11

121. Where a requester makes a request for their own personal data, you do not have to disclose it – see regulation 11(1). However, in line with the duty to advise and assist under regulation 9, you should tell the requester how to make a subject access request for their personal data under section 7 of the Data Protection Act 1998 (the DPA).

122. Where a request includes third party personal data, you do not have to make the personal data available if any of the following circumstances apply:

- (i) Disclosure would breach any of the data protection principles contained in the DPA (this is an absolute exemption – in other words, it is not subject to the public interest test);
- (ii) Disclosure would contravene a section 10 notice under the DPA (right to prevent processing likely to cause damage or distress) and, in all the circumstances of the case, the public interest in making the information available is outweighed by the public interest in not making the information available;

- (iii) The information is exempt from disclosure under section 7(1) of the DPA and, in all the circumstances of the case, the public interest in making the information available is outweighed by the public interest in not making the information available.
123. If you're applying regulation 11(1) or (2), you can refuse to confirm whether you hold the personal data (whether or not you hold it), if to do so would involve disclosing personal data in contravention of regulation 11 (regulation 11(6)). See **Appendix 1 – Resources** for a decision showing how this works in practice.
124. Regulation 11 of the EIRs is very similar to the personal data exemption in section 38(1)(a) and (b) of FOISA. See **Appendix 1 – Resources** for a link to the Commissioner's detailed guidance on the interaction between FOI and the DPA.

Carrying out the public interest test

125. All of the exceptions in regulation 10 are subject to the public interest test in regulation 10(1)(b) of the EIRs. This means that, *even if an exception applies, the information must still be disclosed if, in all the circumstances of the case, the public interest in making the information available is outweighed by that in maintaining the exception.*
126. When considering the public interest test, you need to identify and set out the competing arguments as to:
- (i) why the public interest would be served by making the information available (i.e. the arguments for disclosure), and
 - (ii) why the public interest would be served by withholding the information (i.e. the arguments against disclosure).
127. Once you've done that, you must determine where, on balance, the public interest lies. Remember that there is an in-built presumption in the EIRs that information should be disclosed (regulation 10(2)(a)).
128. Where you want to withhold environmental information under more than one exception, it is a good idea to carry out a two-stage public interest test (this does not exist under FOISA):
- (i) the first stage is to consider whether, in relation to *each* exception, the public interest in making the information available is outweighed by the public interest in maintaining the exception
 - (ii) the second stage involves weighing *all* of the grounds for refusing to disclose the information against all of the public interests served by disclosure.
129. If you carry out the second stage test and are satisfied that, on the whole, the public interest favours withholding the information, you can withhold the information even if you had concluded that, in relation to one of the exceptions, the public interest favoured making the information available.
130. The Commissioner has issued guidance on how to carry out the public interest test and on the sorts of things you should, and shouldn't, take into account in determining where the public interest lies. This also includes more detailed guidance on carrying out the "two-stage" public interest test. See **Appendix 1 – Resources**.

Emissions

131. There are special rules for information relating to emissions. If information relates to emissions, it *cannot* be withheld under the following exceptions (regulation 10(6)):
- (i) Regulation 10(5)(d) – the confidentiality of proceedings
 - (ii) Regulation 10(5)(e) – the confidentiality of commercial or industrial information
 - (iii) Regulation 10(5)(f) – the interests of the person who provided the information
 - (iv) Regulation 10(5)(g) – the protection of the environment
132. There is no definition of emissions in the EIRs or in the Directive. However, there is a useful definition in the European Directive on Integrated Pollution Prevention and Control. It defines emission as:

“the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources (...) into the air, water or land”.

The EIRs and other laws - regulation 5(3)

133. Regulation 5(3) says that any enactment or rule of law which would prevent information from being made available in accordance with the EIRs shall not apply. This means that, if you receive a request for environmental information and another law tells you not to disclose the information, you can still disclose the information under the EIRs.
134. A good example of how this works in practice can be found in *Decision 182/2006 Bruce Sandison and the Fisheries Research Service*. It was public knowledge that salmon had escaped from a fish farm. What wasn't known was how many fish had escaped and which farm they'd escaped from. Mr Sandison therefore asked the Fisheries Research Service for this information.
135. The Fisheries Research Service refused to give Mr Sandison the name of the fish farm. This was on the basis that the Disease of Fish Act 1983 said that the information could only be disclosed with the written consent of the person who had provided the information to the Fisheries Research Service – and written consent hadn't been given.
136. However, regulation 5(3) made it clear that the EIRs took precedence over the Disease of Fish Act 1983. As such, the Commissioner was satisfied that the Fisheries Research Service could disclose the name of the fish farm without breaching the 1983 Act.

Further review

Internal review

137. If a requester believes you haven't complied with the EIRs in responding to their request, they have a right to ask you to carry out a review. Under the EIRs, this is called "making representations" (regulation 16(1)).
138. Although information requests can be made verbally, representations made under regulation 16 must be made in writing and within 40 working days of:
 - (i) receiving your response; or
 - (ii) the final date they should have received your response.
139. Provided the representations are made in writing and on time, you must consider them, review the way the request was handled and decide if you did comply with the EIRs.
140. You have 20 working days after receiving the representations to carry out the review and put things right if you got them wrong the first time. You must also notify the requester of the outcome of the review within this 20 working day period. (Although it is possible to extend the original time for responding by up to a further 20 working days, no such extension is available at review period.)
141. It is good practice for people who weren't involved in the original response to carry out the review, but this might not always be possible in a small organisation. Good practice guidance on carrying out reviews can be found in the Section 60 Code referred to in paragraph 37 above.
142. When you tell the requester of the outcome of the review, you must tell them of their right to appeal to the Commissioner and of their subsequent right to appeal to the Court of Session.
143. If you use the following wording your response will be compliant with the need to inform the requester of their right to appeal:

If you are unhappy with the outcome of this review, you have the right to appeal to the Scottish Information Commissioner within six months of receiving this response. You can contact the Commissioner at:

The Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

Email: enquiries@itspublicknowledge.info

Telephone: 01334 464610

Should you then wish to appeal against the Commissioner's decision, you have a right to appeal to the Court of Session on a point of law only.

Review by the Commissioner

144. The Commissioner must investigate every application she receives, unless it is frivolous or vexatious, not made within timescales or is subsequently withdrawn or abandoned.
145. Where the Commissioner receives an application about the way in which you responded to a request under the EIRs, she will notify you and give you an opportunity to comment on the application.
146. Further information about the Commissioner's investigations can be found on her website – see **Appendix 1 – Resources**.

Active dissemination of information

147. You have an important duty under the EIRs to actively disseminate the environmental information you hold (regulation 4).
148. The types of information you are expected to publish include the following:
- (i) texts of international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it;
 - (ii) policies, plans and programmes relating to the environment;
 - (iii) progress reports on the implementation of the items referred to in sub paragraphs (a) and (b) when prepared or held by a Scottish public authority in electronic form;
 - (iv) reports on the state of the environment;
 - (v) data or summaries of data derived from the monitoring of activities that affect or likely to affect the environment;
 - (vi) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found;
 - (vii) environmental impact studies and risk assessments concerning those elements of the environment referred to in paragraph (a) of the definition of “environmental information” in regulation 2(1); and
 - (viii) facts and analyses of the facts which the authority considers relevant and important in framing major environmental policy proposals.
149. It is assumed you will do this electronically.
150. In EIRs and FOI terms the word “publication” means making information available without someone having to ask for it. The way in which public authorities covered by FOISA meet this duty is to include environmental information in their “Publication Scheme”. Although you do not have to have a publication scheme, you may find that following the Commissioner’s guidance and adopting her Model Publication Scheme (MPS) is a helpful approach.
151. Further information about the Commissioner’s MPS can be found on her website – see **Appendix 1 – Resources**.
152. It is a good idea to review what environmental information you hold, to publish it and to let your colleagues know about it. Not only does active dissemination support good stakeholder relationships, transparency and accountability, it can help make responding to information requests quicker and easier as you can signpost requesters to existing information.
153. In considering what you can actively disseminate, you will also be able to form a view about what you would be likely to withhold if asked for it, and why. It will help you to identify where in the organisation environmental information is held, which could also help you when it comes to locating information.

Other important issues

Altering, concealing, etc. information: a criminal offence

- 154. It is important that you are aware of the criminal offence in regulation 19 of the EIRs.
- 155. If you alter, deface, block, erase, destroy or conceal any record after an information request has been made for the record and you do this *with the intention of preventing the disclosure of information*, you will be guilty of an offence.
- 156. Individual employees, as well as the bodies themselves, can be found guilty of this offence.
- 157. If found guilty, you can be fined up to £5,000.

Good practice tips

- 158. We have lots of experience in Scotland of responding to information requests, both here in the Commissioner's office and in Scottish public authorities. You will see that we have included many of these throughout this document.

Summary of the main points

- 159. Have clear arrangements for responding to information requests and reviews, ideally in writing and published.
- 160. You can't insist a requester puts their request in writing. However, it is a good idea to write down the request, date it and ask the requester to confirm whether it is an accurate record of their request.
- 161. If it's not clear what information the requester is asking for, you must ask the requester to provide more particulars about their request. It is a good idea to do this as soon as you can after receiving the request.
- 162. You should keep a copy of any clarification the requester gives you. The date you receive the clarification is deemed to be the date you receive the request, not the date when you originally received the request.
- 163. When you are preparing to respond to a request, you may find it helpful to produce a schedule of the information you hold covered by a request. Using a schedule helps you keep track of the information and would be required by the Commissioner if the request is appealed.
- 164. It is a good idea to have a record of your reasoning in relation to each of these steps. This will help the reviewer if you receive a request for a review, and help you explain to the Commissioner why you took the decision you did.
- 165. The 20 (or, in limited cases, 40) working days set down by the EIRs is the final date for complying. The EIRs expect you to respond to requests as soon as possible. It's important that you start thinking about how to respond to a request when you receive it. If you leave a request until nearer the deadline, you might struggle to find time to locate the information you need, or to consult with a third party (e.g. a contractor) as to whether the information can be disclosed.

166. If you want to charge for responding to requests, you'll need to publish a schedule of charges. In considering what charges to make, **you should:**

- (i) consider fees charged by other, comparable bodies
- (ii) take account of the actual costs and what you can do to minimise them, for example emailing a document will be cheaper than sending it by post.

In considering what charges to make, **you should not:**

- (iii) set the costs so high that they dissuade people from making requests
 - (iv) set fees regardless of the size of the document. Setting the same fee for providing a copy of any report will not be reasonable if you charge the same amount for a five page report as you do for a 100 page report.
 - (v) take account of how the requester is going to use the information.
167. Even if you don't hold the information, you must still give the requester reasonable advice and assistance. This might involve giving the requester an idea of the information that you do hold that might help them with their enquiry, or an explanation about why you don't hold it. If you don't hold the information, but you know who does, suggest to the requester that they contact the other body.
168. It is good practice for people who weren't involved in the original response to carry out the review. However, the Commissioner knows that this might not always be possible in a small organisation.
169. It is a good idea to review what environmental information you hold, to publish it and to let your colleagues know about it. Not only does active dissemination support good stakeholder relationships, transparency and accountability, it can help make responding to information requests quicker and easier as you can signpost requesters to existing information.
170. We have also produced a compliance check-list. This sets out the questions you should consider when setting-up or reviewing your arrangements for responding to requests for environmental information. This is in Appendix 3: Compliance checklist.

Appendices

Appendix 1: Resources

SIC Decisions

Reference	Decision number	Parties	Summary
Paragraph 14	099/2015	Mr X and Dunbritton Housing Association	The Commissioner was satisfied that the Housing Association was a Scottish public authority for the purposes of the EIRs: the Housing Association was under the control of the Scottish Housing Regulator and had public responsibilities relating to the environment.
Regulation 10(4)(a) Paragraph 78	049/2015	Alexander Adamson and Scottish Environment Protection Agency	The Commissioner was satisfied that SEPA did not hold the information Mr Adamson had asked for. She considered the public interest test but, given that SEPA did not hold the information, did not consider there to be any public interest in requiring the information to be made available.
Regulation 10(4)(d) Paragraph 86	070/2008	James Grant and Aberdeen City Council	Mr Grant asked the Council for a copy of a District Valuer's Report. The Council argued that it was excepted from disclosure under regulation 10(4)(d) because a new report might have to be prepared in the light of possible changes. The Commissioner was satisfied that the report was in fact a completed report, providing guidance on value at a set point in time. The fact that the value might have to be reassessed at some point in the future did not make the report incomplete or unfinished.
Regulation 10(4)(e) Paragraph 89	044/2009	Rob Edwards and the Scottish Ministers	The Commissioner accepted that communications between the Government and the Radioactive Waste Advisory Committee, established by the Government to provide independent advice to Ministers on matters concerning the management of radioactive waste, were internal.
Regulation 10(5)(a) Paragraph 97	108/2008	Simon Brogan and Highlands & Islands Fire Board	In this decision, a balance had to be struck between reassuring the public that adequate measures were in place to deal with potentially catastrophic adverse events, and ensuring that the tactical and detailed contingency plans contained within these measures were safeguarded against potential threats which could undermine or disrupt such plans. The Commissioner decided that the public interest in the effective conduct of the Fire

Reference	Decision number	Parties	Summary
			& Rescue Service in relation to the health and safety of its staff and other emergency services, the safety of members of the community, the need to consider ongoing public safety issues, as well as the need to consider the current terrorist threat assessment, outweighed the public interest in disclosing the Site Specific Fire/Incident Plan.
Regulation 10(5)(g) Paragraph 119	044/2007	G Crole and Transport Scotland	The Commissioner accepted that the measures practiced by environmental and other bodies to restrict the availability of information about badger setts amounted to a degree of protection for their habitat: disclosure would diminish the protection for the badgers' habitat.
Regulation 11(6) Paragraph 123	277/2013	Brian Shannan and Scottish Environment Protection Agency	Mr Shannan asked SEPA to confirm that it employed a named individual. The Commissioner agreed with SEPA that, in the circumstances of this case, SEPA was entitled to reveal whether it had the information Mr Shannan had asked for.

Other resources

Paragraph	Resource	Link
3	United Nations Economic Commission for Europe: The Aarhus Convention: An Implementation Guide	http://www.unece.org/env/pp/implementation_guide.html
15	SIC guidance: Which bodies are covered by the EIRs?	http://www.itspublicknowledge.info/Law/EIRs/EIRsCoverage.aspx
18	SIC guidance: What is Environmental Information?	http://www.itspublicknowledge.info/Law/EIRs/WhatIsEnvironmentalInformation.aspx
38	Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the EIRs	http://www.gov.scot/Resource/0051/00510851.pdf
42	Scottish Government: Bank Holidays in Scotland	http://www.gov.scot/Topics/People/bank-holidays
39	SIC self-assessment toolkit: Advice and assistance	http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=8624&SID=8614

Paragraph	Resource	Link
41(i)	Responding to information requests: schedule of documents	http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=7793&slD=105
44	SIC self-assessment toolkit: Responding on time	http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=8005&slD=8614
60	SIC guidance: Fees and Excessive Cost of Compliance	http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Fees/FeesOverview.aspx
0	SIC self-assessment toolkit: Searching for, locating and retrieving information	http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=8227&slD=8614
72	SIC guidance: Exceptions	http://www.itspublicknowledge.info/Law/EIRs/EIRsExceptions.aspx
73	SIC Decisions database (searchable)	http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/Decision_Listing.aspx
64	Scottish Ministers' Code of Practice on Records Management	http://www.gov.scot/Resource/Doc/933/0124124.pdf
80	SIC guidance: Vexatious or repeated requests (also covers manifestly unreasonable requests under the EIRs)	http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.aspx
123	SIC guidance: Personal information	http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section38/Section38.aspx
130	SIC guidance: The Public Interest Test	http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/ThePublicInterestTest/thePublicInterestTest.aspx
146	SIC's Investigations Handbook	http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=7792&slD=105
146	SIC guidance: The Commissioner's Investigations: A Guide for Scottish Public Authorities	http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=8370&slD=105
139	SIC Model Publication Scheme	http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/PublicationSchemesHome.aspx

Appendix 2: The definition of environmental information

Regulation 2 of the EIRs contains the definition of "environmental information." It means any information in written, visual, aural, electronic or any other material form on -

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c)

Appendix 3: Compliance checklist

If you can answer yes to the following questions, and record the evidence that confirms this (e.g. web links, file locations, descriptions), you are likely to comply with your duties under the EIRs.

The most important issues are those in **red** so we encourage you to address these first.

You may find it helpful to cut and paste this table into a separate document so you can use it as the basis of a self-assessment. Any issues can then be turned into an improvement action plan which will enable you to deliver improvements over a manageable period of time.

Bear in mind that your arrangements should be proportionate and reflect the size and scope of your organisation. They do not have to be elaborate or sophisticated.

Question	Yes/ No/ not sure?	Comment
General		
1.	Do we give information to the public on how to make information requests?	
2.	Is this information easy to find on our website?	
3.	Have we put in place reasonable arrangements for responding to requests for information and reviews, and told people about them?	
4.	Have we written and published a charging policy?	
Staff awareness		
5.	Can all staff recognise an information request and a review request (verbal and written)?	
6.	Do all staff know to whom to refer information requests, or how to respond themselves?	
7.	Do all staff know to whom to refer requests for review?	
8.	Do staff with responsibility for responding to information requests know how to identify environmental information?	
9.	Do all staff know that information requests may now carry legal rights?	
10.	Is training on responding to requests for environmental information included in staff induction training?	
11.	Are staff kept informed of e.g. of changes to legislation and good practice codes? How, how frequently/ regularly?	
12.	Have procurement and contracts procedures have been updated to reflect the requirements of the Section 60 Code of Practice? Are they reviewed periodically?	

	Question	Yes/ No/ not sure?	Comment
13.	Are staff who manage procurement and contracts familiar with the relevant section of the Section 60 Code of Practice?		
Advice and assistance			
14.	We give clear contact details for anyone who wants help about how to make an information request?		
15.	Do we tell people about the kind of information we hold and how to either access it themselves or who to ask for it?		
16.	Do our arrangements consider how we can help people to clarify or narrow their requests, e.g. to avoid fees?		
Arrangements for responding to requests and review requests			
17.	Have we a nominated senior member of staff who has strategic responsibility for our EIRs performance and made this known to staff?		
18.	Do our arrangements specify who is responsible for:		
	<ul style="list-style-type: none"> logging information requests when they are received? 		
	<ul style="list-style-type: none"> handling requests, including searching for, locating and retrieving information held across the organisation? 		
	<ul style="list-style-type: none"> handling requests for review? 		
19.	Do we log and track requests?		
20.	Do our logging and tracking arrangements:		
	<ul style="list-style-type: none"> show us what requests we have? 		
	<ul style="list-style-type: none"> tell us what stage they're at (request, review, appeal to the Commissioner)? 		
	<ul style="list-style-type: none"> show us whether we are meeting statutory deadlines? 		
	<ul style="list-style-type: none"> record the outcome of requests and reviews? 		
21.	Do our arrangements give staff the authority to demand and chase colleagues for information or advice in responding to EIRs requests, including escalation procedures?		

Question		Yes/ No/ not sure?	Comment
22.	Do we set and monitor internal deadlines for colleagues?		
23.	Do our arrangements make it clear that clarification, if needed, is asked for as soon as possible?		
24.	Do our arrangements include consulting third-parties and the importance of setting and monitoring deadlines?		
25.	Do we keep a record of our searches, especially where we conclude that we do not hold information?		
26.	Do we keep a record of our calculations where we find that complying with the request will incur a fee or will be manifestly unreasonable?		
27.	Is our review system fair and impartial and does it comply with the Section 60 Code of Practice?		
28.	Do we have a mechanism for capturing lessons learned at each stage of responding to a request?		
29.	Do we review requests to identify information we could publish up front?		
Issuing notices (including responses)			
30.	When we disclose all of the information we hold in relation to a request, do we say that it is a full disclosure?		
31.	If we don't hold the information, do we tell the requester, with reference to reg 10(4)(a) of the EIRs?		
32.	If we withhold information, do we state that we hold the information, specify the exception we are relying on, and state why it applies?		
33.	If we are relying on an exception, do we explain the public interest factors we considered and the reasons why these favour applying the exemption?		
34.	If we issue a fees notice, do we specify the fee and how to pay it?		
35.	Do refusal notices we issue (in response to information requests)		
36.	Do review responses: <ul style="list-style-type: none"> state there is a further right of appeal to the Commissioner and include the requester's right (on a point of law only) of appeal to the Court of Session following an investigation by the Commissioner? 		
37.	Do we have template responses that cover these basic requirements?		

Question	Yes/ No/ not sure?	Comment
Performance monitoring and management		
38.	Do we produce and submit statistical information to the Scottish Information Commissioner each quarter?	
39.	Do we have clear monitoring and reporting arrangements to ensure that we achieve compliance with the EIRs, to an acceptable standard?	
40.	Are EIRs duties an integral part of your governance and risk arrangements?	
41.	Are senior/ responsible managers aware of the requirements of the Section 60 Code of Practice?	
42.	Do we keep staff at all levels informed about our EIRs performance?	
Support		
43.	Do we know who to go to for general, technical and legal advice on EIRs matters?	
44.	Are staff familiar with the support available on the Scottish Information Commissioner's website?	
45.	Do we have contact, or share practice experience, with peers in other organisations for mutual support?	
46.	Do we subscribe to the Scottish Information Commissioners Decisions Round-up and other periodic communications?	
47.	Is EIRs training and development (new and refresher) included in our learning and development plans?	

Scottish Information Commissioner

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