



## GUIDANCE NOTE NUMBER 6

### ENVIRONMENTAL INFORMATION REGULATIONS

The Environmental Information Regulations (EIR) came into effect on 1<sup>st</sup> January 2005.

#### Definition of Environmental Information

'Environmental Information' – means any information in 'written, visual, aural, electronic or other material form' regarding:

- (a) the state of the elements of the environment, such as air & 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 amongst 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 (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 (a) and (b) as well as measures or activities designed to protect these elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (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 in as much as they are or may be affected by the state of the elements of the environment referred to in (a) or, through these elements, by any of the matters referred to in (b) and (c);

#### Application of the Regulations

These regulations apply to public authorities, as well as any other body under the control of a public authority and, in relation to the environment, has public responsibilities, exercises functions of a public nature or provides public services – please note this is a wider definition than under FOI.

## Information

Information is held by a public authority if the information:

- (a) is in its possession and it has been produced or received by the authority;  
or
- (b) is held by another person on behalf of the authority

Subject to the exemptions, a public authority is required to progressively make environmental information available by electronic means in an organised and accessible format (this does not apply to information collected in non-electronic format prior to 1<sup>st</sup> January 2005).

From 1<sup>st</sup> January, a public authority will have a duty to make environmental information available on request, as soon as possible, and no later than 20 working days after receipt of the request. If a request is received which the authority reasonably believes to be of such complexity or volume that it is impracticable to comply within 20 working days or to make a decision to do so, the response period may be extended to 40 working days.

Where an applicant requests information in paragraph (b) of the definition of environmental information, they may also request information on measurement procedures, including methods of analysis, sampling, and pre-treatment of samples, used in compiling the information.

Any enactment or law which would prevent the disclosure of information in accordance with these Regulations will not apply.

## Format

Information should be supplied in any reasonable format requested. If the requested format is to be refused the applicant should be informed, explaining the reasons for the decision, within 20 working days of receipt of the request.

## Charges

The authority may charge for providing environmental information. That charge must be limited to what we consider to be a reasonable amount. We may ask for advance payment of the charge and must notify the applicant of the amount. The 20 working day response period is put on hold from the date of notification of charges until payment is received. If payment has not been received 60 working days after the applicant was notified of the charges, the request becomes invalid. We may not charge for allowing access to public registers or lists of environmental information or to examine information at a place it is made publicly available.

A public authority should publish details of its charges.

## Advice & Assistance

A public authority has a duty to provide advice and assistance to applicants.

If an applicant is not satisfied with the response to a request, they should contact the authority in writing within 40 working days of the response. The authority must then reconsider the request and decide if it has complied with the Regulations. The applicant must then be notified of the decision with 40 working days of receipt of the communication. If the authority decides it has not complied with the request, it must confirm this to the applicant, advise what action will be taken to comply, and when that action will be taken.

## Exceptions

The authority may refuse to respond to a request if:

- (a) an exception applies, and
- (b) the public interest in withholding the information outweighs the public interest in disclosing it

Please note that the public interest test applies to all exceptions in the EIRs.

A public authority may refuse to disclose information if:

- (a) it does not hold that information at the time the request was received
- (b) the request is manifestly unreasonable
- (c) the request is too general (and the authority has asked the applicant to be more specific)
- (d) the request relates to unfinished documents or incomplete data, or
- (e) the request involves the disclosure of internal communications

A public authority may refuse to disclose information if the disclosure would adversely affect:

- (a) international relations, defence, national security, public safety, (there is also no duty to confirm or deny that information is held, if, to do so, would prejudice these purposes and would not be in the public interest)
- (b) the course of justice, the receipt of a free trial, or the conduct of a criminal or disciplinary inquiry,
- (c) intellectual property rights
- (d) the confidentiality of the proceedings of any public authority where such confidentiality is provided by law

- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest
- (f) the interests of the person who provided the information where that person–
  - (i) was not under any legal obligation to provide it to any public authority
  - (ii) did not supply it in circumstances such that any public authority is entitled apart from these Regulations to disclose it
  - (iii) has not consented to its disclosure
- (g) the protection of the environment to which the information relates

An authority may not refuse to disclose information about emissions under exemptions (d) to (g) above.

Personal Information - where the applicant requests personal information about themselves, this must be dealt with as a subject access request under the Data Protection Act (refer to Data Protection policy). Where a person requests personal information about someone else, the public interest test applies and the Data Protection principles must be considered. The duty to confirm or deny also does not arise in relation to information about someone else, if, to do so, would breach any of the data protection principles.

### **Refusal to Provide Information**

If a request is refused, the refusal must be made in writing no later than 20 working days after receipt of the request. The refusal must specify the reasons for refusal including exceptions relied on and why the public interest was deemed to be in favour of withholding the information. The refusal must also advise the applicant of the complaints procedure (refer to Guidance Note 8).

If the refusal is on the basis of holding unfinished documents or incomplete data, the estimated date of completion should be provided to the applicant.

### **Offences**

It is an offence under these regulations to alter, deface, block, erase, destroy or conceal any record rather than respond to a request for information.