



Information Commissioner's Office  
Promoting public access to official information  
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## Freedom of Information Act Environmental Information Regulations

### Property Searches

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

This guidance provides advice to local authorities on how they should respond to requests made for local property search information, what the relationship is between the EIR and the Local Authorities (England)(Charges for Property Searches) Regulations 2008 (the CPSR), and in particular whether the information provided in response constitutes environmental information as defined in the EIR.

This guidance applies equally to the Local Authorities (Charges for Property Searches)(Wales) Regulations 2009 which do not differ materially from the CPSR.

### Overview

- The majority of the information provided by local authorities in response to property search enquiries is likely to be environmental information as defined by the EIR.
- The charging provisions in the CPSR do not apply to environmental information.
- Under the EIR a public authority should accept an applicant's request to inspect the information.
- Environmental information that is inspected by the applicant cannot be charged for.
- Public authorities cannot use the publication scheme provisions of the FOIA to charge for environmental information contained in property search records.
- Information that is not environmental should be considered under the FOIA. In such cases, the CPSR can form the basis for any charging.

### Background

Local authorities have traditionally made charges for providing property search information, but there has been a lack of consistency in this area. The

CPSR were introduced in order to provide a framework within which local authorities could make charges for property search services, specifically for granting access to property records held by the local authority and for answering enquiries about a property. In essence, they permit charging to be made on a cost recovery basis.

Much of the demand for these services is in relation to Home Information Packs (HIPs). A HIP is required for most residential properties that are offered for sale on the open market. A compulsory component of the HIP is a property search report. The reports are compiled from information provided by a local authority in relation to various standard enquiries. These enquiries are prescribed in the Home Information Pack (No.2) Regulations 2007 (the HIP Regulations).

### **Interaction between the CPSR and the EIR**

The charging provisions of the CPSR do not apply where either:

- the local authority is able to charge for access to property records under another enactment, or
- the local authority has to provide access free of charge under the provisions of another enactment.

The EIR give a public authority the discretion to impose a reasonable charge for making environmental information available. They also set out circumstances under which no charge can be made.

The CPSR were enacted in December 2008, nearly four years after the EIR came into force, and so it is likely that they were drafted in recognition of the access provisions contained in the EIR. This position also acknowledges the primacy of EU legislation, whereby European law, such as the EIR, takes precedence over domestic law.

Consequently, if the property records comprise environmental information as defined by regulation 2 of the EIR, the CPSR cannot be used as the basis for charging and public authorities must adopt the charging provisions in the EIR.

### **Is property search information subject to the EIR?**

As indicated in our guidance [What is environmental information?](#), the definition of what comprises environmental information is broad. This guidance may be developed as practical experience of the application of the EIR increases. Nevertheless, it is still important to consider carefully under which part(s) of the definition in regulation 2 information requested for the purposes of a property search may fall.

In most cases requests for property search information will relate to the questions contained in the standard CON29 local search enquiry forms.

Much of this information is likely to be environmental information. For example:

- A planning permission, together with other information about the planning process, relates to land use and so comprises a measure (Regulation 2(1)(c)) that affects or is likely to affect an element of the environment, e.g. land.
- Information on land to be acquired for road works and regarding nearby road or railway schemes is also likely to be about measures that will affect the land.
- Designation as a conservation area can be regarded as a measure that will protect land and buildings falling within it.
- Compulsory purchase orders will be environmental information to the extent that they have the effect of permitting new land uses. Simple demolition of buildings using such powers will also have an effect on the state of the land.
- Information about contaminated land is information on the state of the land.

However, with some of the enquiries the situation may be less clear, and so will need to be considered on a case by case basis.

Although CON29 enquiries will often result in simple 'Yes' or 'No' answers, the context of the requests – in particular where requests are made to inspect information – is that in most cases environmental information is being examined so that answers to the enquiries can be provided.

Overall, we consider that the majority of the information contained in property records held by local authorities is likely to be environmental as defined in the EIR. Consequently, local authorities should adopt this as a working assumption and identify the categories that can reasonably be regarded as comprising environmental information and those that can not.

It will still be necessary to consider the information in relation to each property search on its own merits as individual circumstances may lead to a different conclusion.

It should be noted that this guidance has been based on scenarios that the Information Commissioner has been made aware of to date. It is likely that it will be updated as he adjudicates on individual cases involving requests for property search information.

## **EIR and access to property records**

### **Inspection and charging**

Having established that most, if not all, requests for property search information are subject to the EIR, it is necessary to consider how the charging provisions of the EIR will apply.

The EIR allow a public authority to charge for making environmental information available. However, where the information is made available either by permitting access to public registers or lists or through inspection, no charge may be levied (regulation 8(2)). Such an approach is fully consistent with Article 5(1) of European Directive 2003/4/EC on Access to Environmental Information (the Directive).

In terms of inspection, it is important to note that Article 3(5) of the Directive introduces the requirement for arrangements to be made which ensure that the right of accessing information “can be effectively exercised, such as .... the establishment and maintenance of facilities for the examination of the information required”.

Public authorities should, therefore, be in a position to make property search records available to applicants by inspection. This is supported by regulation 6(1) which allows applicants to request that information is made available in a particular form or format. Such a request should be accepted unless it is reasonable for the public authority to make the information available in another form or format (regulation 6(1)(a)) or it is already publicly available and easily accessible to the applicant (regulation 6(1)(b)).

The purpose of this is to increase flexibility within the access regime provided by the EIR, with a view to ensuring that the preference of applicants for the way in which they wish to access information is accommodated.

Although regulation 6(1) is primarily concerned with the particular physical form or format of the information, the general purpose of the regulation suggests that it can be interpreted broadly and include requests to inspect environmental information.

The Directive and the Implementation Guide to the Aarhus Convention (the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice on Environmental Matters from which the Directive derives) lends support to this. For example:

- Recital 15 of the Directive refers to arrangements to “guarantee that the information is effectively and easily accessible”.
- The Implementation Guide specifically states that a public authority “must allow” an applicant to examine the original documentation unless either of the alternatives that are replicated in regulation 6(1), as referred to above, can be offered.

It is unlikely to be reasonable for a public authority to reject a request for inspection of property search records. For example:

- It would be strange for a public authority to accept a request for information to be made available electronically but not to accept an

applicant's request to inspect the same information at a place designated by the authority.

- The fact that the CPSR have been enacted cannot be used by public authorities as a justification for insistence that access to the records is granted subject to a charge. The drafting of the CPSR recognises that there are situations where other legislation, such as the EIR, will take precedence.
- If a public authority was able to refuse the free inspection of environmental information this would be contrary to the general policy principles as set out in the Directive and which are embodied in the EIR.

Similarly, an authority cannot use regulation 6(1)(b) to refuse a request to inspect on the basis that the information can be supplied on submission of the CON29 local search enquiry forms and payment of the requisite fee and so is publicly available and easily accessible to the applicant. The requirements of regulation 6(1)(b) are not met because the charging as embodied in the CPSR acts as a barrier to the information being easily accessible. This contrasts, for example, to publication on a website or availability in a public library free of charge or at minimal cost.

In light of the above, we consider that a public authority should allow the inspection of the environmental information contained in property search records where this is requested. In such cases, as the requested information is inspected 'in situ', no charge can be made.

There will be circumstances where an applicant asks for copies of the property search information. Public authorities may make a charge, but the charging provisions of the EIR will still apply. In accordance with regulation 8(3), the charge will be "a reasonable amount" and will therefore comprise the actual costs of photocopying. For further information see our guidance [Charging for environmental information](#).

### **Time for compliance**

To the extent that the property search enquiries are requests for environmental information they should be complied with as soon as possible and no later than 20 working days following receipt of the request as set out in the EIR.

However, in view of the potentially large number of enquiries that a local authority may receive, there may be difficulties in providing inspection facilities that meet the requirements of each requester. Consequently, a local authority could use an appointments system, potentially involving a number of different locations, and explain to applicants why an appointment is not as early in the 20 working day period as they may have expected.

In cases involving search enquiries for a number of properties, it may be possible for a public authority to extend the time limit for compliance by a

further 20 working days due to the volume of information involved and the difficulties in making arrangements for inspection (regulation 7(1)).

Regulation 12(4)(b) provides an exception from the duty to disclose environmental information where a request is manifestly unreasonable. For example, this may be considered in cases where requests are made for the records relating to all, or a significant number of, properties within the local authority's area. However, a public authority must be aware of its duty to advise and assist applicants (which could, for example, help to refine the request) and that the exception is subject to a public interest test. [A brief introduction to the exceptions](#) in the EIR can be found on our website.

### **Publication Scheme**

It may be possible for a public authority to include property search records as a category of information that is published through a publication scheme that has been adopted under section 19 of the FOIA. However, an authority cannot use the charging policy of the scheme to import the charging provisions of the CPSR on the basis that such charging is authorised under another statute.

Where the records comprise environmental information, the requirements of the EIR take precedence. As there is a duty under the EIR to make information available free of charge in specific circumstances (regulation 8(2)), and a general discretion to charge in all other circumstances (regulation 8(1)), an authority cannot circumvent the provisions of the EIR and seek to make a CPSR charge on the basis that this is permitted under the publication scheme.

### **Non-environmental information**

Although much of the information provided in response to property enquiries will be environmental in nature, there may be some which is not. Requests for this information should be considered under the FOIA, where they are made in writing, and dealt with as follows:

- A charge can be made in accordance with the framework set out in the CPSR because section 9(5) of the FOIA allows the FOIA Fees Regulations to be disregarded where there is provision for charging under another statute.
- Information made available by virtue of other legislation (other than by inspection) is regarded as being reasonably accessible to an applicant and therefore exempt from the FOIA. Any charges would therefore fall outside the legislation for which the Information Commissioner has regulatory responsibility.

However, we recognise that for an authority to consider each CON29 question in order to establish whether the information is subject to the EIR or the FOIA has the potential to be an overly bureaucratic process. In light of this guidance, an authority may therefore wish to adopt a policy of making all the

property search information available on the basis of the principles set out in the EIR.

## Other considerations

- It is possible that property search records may contain the personal information of third parties, in particular when they are viewed 'in-situ', but also, for example, when obtaining full copies of the records. Public authorities should, therefore, be aware of their obligations under the Data Protection Act 1998. Please see our guidance [Determining what is personal data](#).
- The Re-use of Public Sector Information Regulations 2005 allow public authorities, subject to compliance with certain requirements, to impose a separate charge for re-use of information. An authority would need to consider whether these requirements are met in the context of the property search enquiries. The Information Commissioner is unable to provide guidance on these regulations as the Office of Public Sector Information (OPSI) is responsible for their administration. Further information is available on the OPSI website at <http://www.opsi.gov.uk/advice/psi-regulations/index>.

[A protocol exists between the Information Commissioner and OPSI explaining the Commissioner's responsibilities in relation to access to information and OPSI's responsibilities in relation to re-use of information - <http://www.opsi.gov.uk/advice/psi-regulations/disputes-resolution/opsi-ico-protocol.pdf>.]

## More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

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