

# Introduction to FOIA and the EIR

## Workshop

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## Welcome and recap

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Welcome. Housekeeping – cameras on please. Explain that they should have done all 3 parts of the online module, and this workshop should put their brains to work to check their understanding. The module covered what the FOIA and the EIR are all about, and the procedural aspects of making and responding to FOI requests, as well as looking at the ICO's powers.

So before we get into our first activity, just to recap, the FOIA and the EIR are the two key pieces of legislation which aim to ensure that information which is held by PAs, and which should be in the public domain, is made public. Two things to recap quickly: Firstly: there are two ways in which PAs are required to publish information, can anyone remember? both proactive and reactive.

Secondly: The EIR provides access to environmental information so I want to ask you: what is environmental information? We could spend a whole workshop on this but the key point is that it is information on the elements and/or factors of the environment; plus measures/activities. Can I just check you have received the sheet for activity three, and the sample DNs.

Time for our first activity.

## Activity 1 (discussion): guidance and legislation

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### 1. Finding the legislation that we regulate ([legislation.gov.uk](http://legislation.gov.uk))

- The FOIA
- The EIR

### 2. Our guidance

- Consider what you might need for your role
- Guidance for public authorities
- Guidance for individuals

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Our first activity is to show you how to find our main two points of reference: the legislation that we regulate, itself, and our guidance on the legislation. All of this is publicly accessible, but that doesn't mean that we don't need to use it ourselves, to do our jobs: gone are the days when you get given a printed copy of the FOIA and the EIR. So you're likely to want to bookmark some of these web pages to help you look things up.

Hit – FOI and EIR. Legislation website. Make sure latest version available is highlighted.

Hit section 14

Then go onto PA guidance. Hit section 14 – look at the difference

Hit How to make a request for information, who is a PA and then make a complaint



- Arrow on the left is for individuals who want to know how to make a request
- Arrow top right is for anyone whose made a request and isn't happy, either because they haven't received a response, internal review outcome or they're unhappy with the decision
- Arrow bottom right is all our detailed guidance for PAs on FOIA/EIR

## Handling FOIA queries on the helpline

Remember  
who your  
caller is

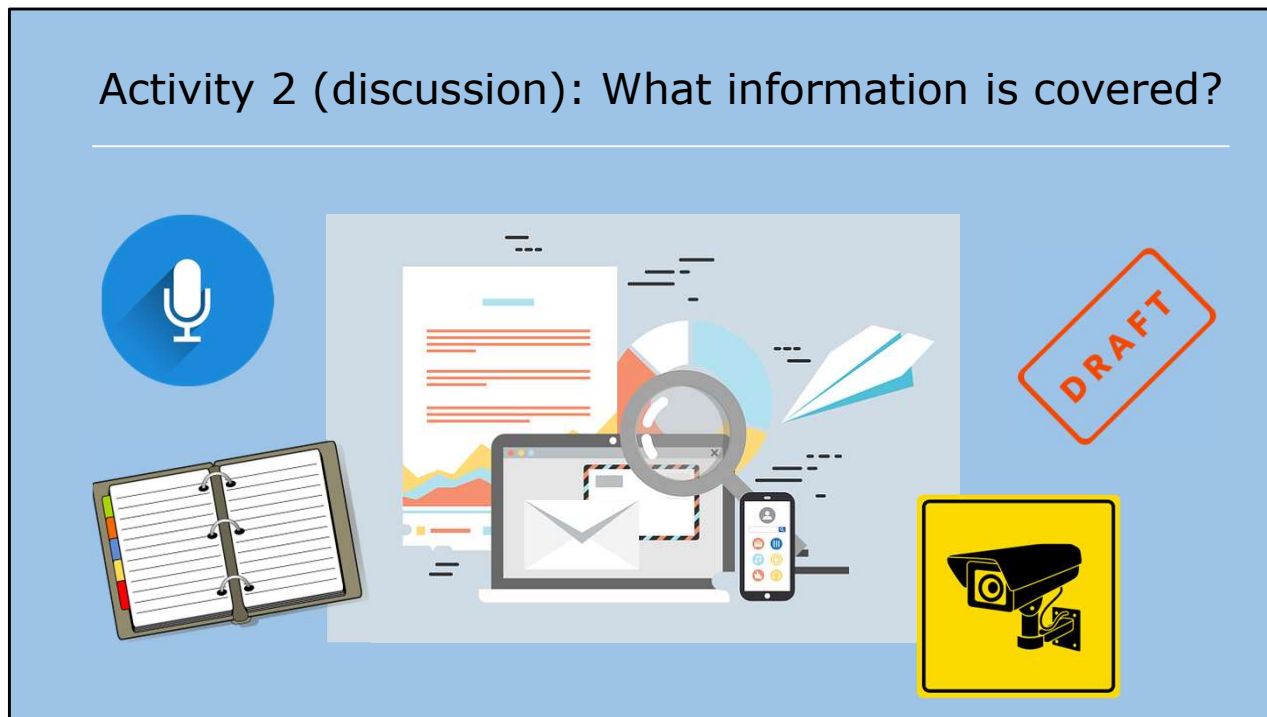
Know the  
basics and  
know our  
guidance

"But will I get  
the  
information?"

- PADPCS helpline, you're expected to know how to guide a caller to make a request and tell them when they should bring a complaint to us
- Business helpline, you might be expected to know a little more from a PA's perspective – but don't do the work for them.
- In either case, know our to navigate our website and where the guidance (for PAs and requestors) is
- "But will I get the information?" / "Can I withhold it?" - We can't answer that. We'll either need to look at it as a complaint or the PA has to make their own decision.

## Activity 2 (discussion): What information is covered?

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Ask the delegates this. If they don't volunteer the correct answer, it's **recorded information, which is 'held' by the PA**. Discuss what may or may not be covered – a private diary with work appointments in it? A Teams chat? What is the information about: is it work-related? (Boris – WhatsApp – a record of how he was spending public money on furnishing his apartment). Ask if they understand what being 'held' means: not the physical location, but more to do with control over it.

## Activity 3: a valid request

Do's and  
don'ts

Real  
examples

Things to  
avoid

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Ask the delegates – how do you request information from a PA? Can anyone remember any dos and don'ts? Key point: – **FOIA has specific requirements in s.8**, including using a real name and making the request in writing. **In the EIR, it's not specified.**

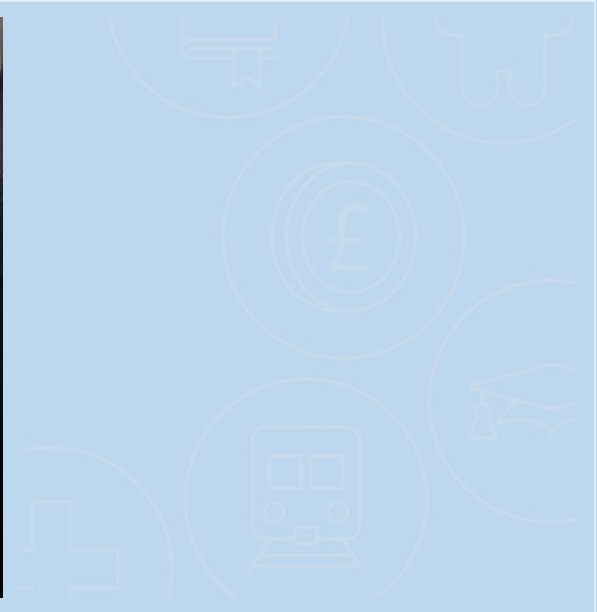
Lets all look at some examples

[Consider the two examples on the sheet – first one is fine as a valid request (although issues may arise around whether to disclose – the list of properties was ultimately withheld under reg 12(5)(a) – adverse effect on health and safety – see separate trainers' version of activity sheet, for more details).

Second example – several issues. First – see if they spot it's environmental. Second – request being made obo landowner – this is fine in the context of a normal EIR request, since info will be made public anyway. Includes some questions – not asking for recorded info; rest of request is ok though. Reference to confidentiality – *very* problematic, should the Council even have considered this under the EIR? Ended up informally resolving this case, as EIR apparently not appropriate route of access. And – time for response: if it *was* wanted under EIR, doesn't allow enough time.]

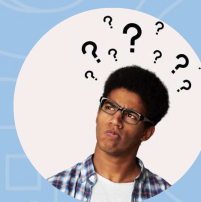
If anyone asks about s12, s14, manifestly unreasonable, explain we will cover these briefly when we're looking at some decision notices and also that there is a detailed module on these.





## Activity 4(a) – time to respond (FOIA)

- How long does a PA have to respond to a request under section 10(1) FOIA?
- What is different about working days, for schools?
- What happens if the PA asks the requester to clarify the request?
- What can the PA do if they want to consider applying the Public Interest Test?



Ask the delegates the questions on the slide.

Answers:

- Promptly or within 20 working days
- Schools do not have to count school holidays as working days although there is an outside time limit of 60 working days maximum. Does not apply to universities.
- This would stop the clock, and it would re-start after the clarification is received, allowing 20 working days from that point onwards.
- The PA can extend the time for response to such time as is “reasonably practical” – we consider no more than an additional 20wd would be reasonable.

## Activity 4(b) – time to respond (EIR)

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- How long does a PA have to respond to a request under reg 5(2) EIR?
- What can the PA do if the request is complex or voluminous?
- Can the time to respond be extended if the PA wants to apply the Public Interest Test?



Ask the delegates the questions on the slide.

Answers:

- as soon as possible and no later than 20 working days after the date of receipt of the request
- They can allow another 20wd
- No

## Activity 5: Refusal notices

"We are sending the information that's available, but the rest is confidential"

"We're not responding to your request, as you are a persistent complainer"

These do not comply with the requirements of FOIA/EIR. What information should be in a refusal notice?

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These are some real refusals which I have seen recently. Ask the delegates if they can remember what should be in a refusal notice, in contrast to the poor examples on screen. (Next slide has sentences to complete, together)

Key facts: PA should confirm whether **info is held?** **What exemption?** **PIT?** **Offer an IR.** **Right to complain to ICO.**

Then call out the answers to the checklist on the next slide, together.

## Refusal notice: checklist

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The PA should state whether it ... the information.

If the PA doesn't want to disclose the information it should state which ... applies.

If applying a qualified exemption/exception, the PA should explain how it considered the ... .. .

The PA should offer to carry out an ... .. .

The notice should mention the right to ... to the ... .



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Holds  
Exemption  
Public Interest Test  
Internal review  
Complain... ICO.

## Activity 6: ICO decisions in procedural cases

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In your group, discuss the ICO decision notice you've been given.

- Does the complaint relate to the FOIA or the EIR?
- What was the key issue for the ICO to determine?
- What does the PA have to do now?



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Explain delegates are going into break-out rooms to discuss real DNs – refer to the points on the slide for them to find answers to. Allow 10 minutes.

[The examples demonstrate:

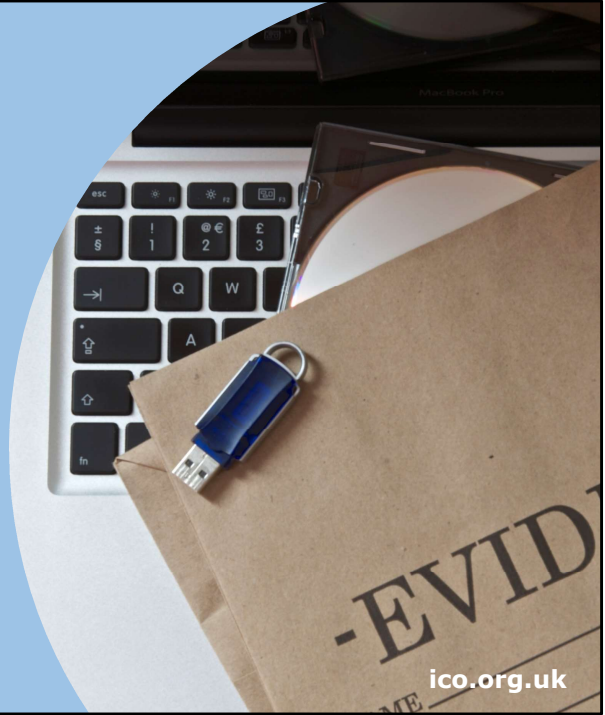
- a s10 breach (no steps),
- a reg 5(2) breach (response ordered), (these two could be provided to the same group, to compare and contrast – they're v short)
- a s12 refusal (PA upheld) and
- a s12 refusal (complaint upheld, new response ordered).]

Bonus point if anyone can guess why we don't just order the disclosure, in the second s12 case (answer: because we wouldn't normally order disclosure where we have not seen the information).

# Questions and recap

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## Intro to FOI and EIR Workshop

### Activity 3: How do you make a request?

1. Consider this request made to HS2 in January 2020:

"Under the Freedom of Information Act I am requesting a full list with dates, addresses, post codes and amounts of all properties purchased via HS2 since inception to 31/12/2019. I need this data listed in excel format as has been supplied by you on three previous annual occasions".

What issues may arise from this?

2. What comments can you make about this request from November 2020? What issues may arise and how should the Council have handled it?

"Dear [Borough Council],

I note that on 18th November an email has been uploaded onto the above planning application mentioning that a badger survey has taken place.

I assume at least part of this survey has taken place within the [property] that is subject of this application. On behalf of Mr B, the lawful owner of this part of the land subject of this planning application, can I please ask why no permission was sought to enter his land for the purposes of this survey, or if there is a lawful power for this to happen without his permission why wasn't he informed?

Additionally, whilst I appreciate the survey needs to stay confidential, Mr B (and myself as his representative in this matter) have a legitimate need to view this information. As such please can you forward me the details of the badger survey, and the correspondence that has led to this request for a badger survey being made... this doesn't appear within the planning documents.

I respectfully request the above by close of working hours next Wednesday (25th November)."



# **Intro to FOIA and EIR Workshop: Trainers' notes to accompany PowerPoint "Intro to FOI and EIR WORKSHOP"**

**Forum: Teams meeting**

**Duration: 1.5 - 2 hours**

## **Learning objectives:**

Overall goal: embed what was covered in the Intro module.

Specific objectives:

1. Understand that the FOIA and EIR are about putting information into the public domain.
2. Understand that environmental information, broadly, is information on the elements and factors of the environment, including on measures and activities.
3. Understand: where can the legislation be found online, for reference? Where is our guidance?
4. Understand that the legislation covers recorded information which is 'held' by a PA.
5. Understand how to make a request, and some of the issues faced by PAs receiving requests, including a brief understanding of 'too broad' requests and vexatiousness.
6. Understand the time a PA has to respond and what should go in a refusal notice.
7. Understanding an ICO decision notice.

## **PowerPoint**

### **Welcome and recap**

Ask everyone to introduce themselves. Check whether delegates are encountering FOI in their work – helpline, access to information, FOI case officer? Or just there for general awareness?

Explain that FOIA and EIR are the two key pieces of legislation which aim to ensure that **information which is held by PAs, and which should be in the public domain, is made public**. Check knowledge: both proactive and reactive publication are required.

Check knowledge: **What is environmental information?** We could spend a whole workshop on this but the key point is that it is information on the elements and/or factors of the environment; plus measures/activities.

## **Activity 1: guidance and legislation**

### ***Discussion, considering guidance/legislation online***

Delegates need to know: *where is the legislation which we regulate?*  
*Where is our guidance and why is it important?*

(a) Where is the legislation?

Share screen and demonstrate that you can google "Freedom of Information Act 2000". This will come up with legislation.gov.uk as one of the top answers: this is the *central resource* where all UK legislation is available to view online. Click on it – show that you should *ensure "latest version" has been highlighted at the side.*

Click on the link from the table of contents, to find (as an example) the exemption for section 14: vexatious requests. Read out s14(1). Explain that, like section 14, many of the exemptions are just described very briefly and this is why our guidance is important, because case law has developed to determine how the Act is applied.

Then demonstrate that the EIR is available on the same website.

(b) Where is our guidance?

Still sharing screen, navigate to the ICO website > For organisations. Show how to find our *list of guidance*. As an example, look at the guidance on vexatious requests (overview paragraph). As we saw, the Act itself doesn't define the word vexatious: so the guidance is vital to understand what this means in an FOI context.

## **Activity 2: What type of information is covered?**

### ***Discussion***

Ask the delegates this. If they don't volunteer the correct answer, it's *recorded information, which is 'held' by the PA*. Discuss what may or may not be covered – a private diary with work appointments in it? A Teams chat? Ask if they understand what being 'held' means: not the physical location, but more to do with control over it.

## **Activity 3: How do you make a request?**

### ***Discussion, considering real examples on worksheet***

Ask the delegates – how do you request information from a PA? Key point: – *FOIA has specific requirements in s.8, including using a real name and making the request in writing. In the EIR, it's not specified.*

Delegates should look at activity sheet.

[Consider the two examples on the sheet – first one is fine (although issues may arise around whether to disclose – the list of properties was ultimately withheld under reg 12(5)(a) – adverse effect on health and safety – see separate trainers’ version of activity sheet, for more details).

Second example – several issues. First – see if they spot it’s environmental. Second – request being made obo landowner – this is fine in the context of a normal EIR request, since info will be made public anyway. Includes some questions – not asking for recorded info; rest of request is ok though. Reference to confidentiality – *very* problematic, should the Council even have considered this under the EIR? Ended up informally resolving this case, as EIR apparently not appropriate route of access. And – time for response: if it was wanted under EIR, doesn’t allow enough time.]

If anyone asks about s12, s14, manifestly unreasonable, explain we will cover these briefly when we’re looking at some decision notices and also that there is a detailed module on these.

#### **Activity 4: time for response (2 slides)** ***Recap from training module – q&a***

Q&A from the two slides.

Key point: *an initial response must always be issued within 20 working days, but there are different circumstances which allow this to be extended, under the FOIA and EIR.* (If time, ask delegates if they remember when a fee can be charged under each legislation?)

#### **Activity 5: refusal notices** ***Discussion / consideration of examples***

Ask the delegates if they can remember what should be in a refusal notice, in contrast to the poor examples on screen. Key facts: *is info held? What exemption? PIT? Offer and IR. Right to complain to ICO.* Then call out the answers to the checklist on the next slide, together.

#### **Activity 6: ICO decisions about procedural complaints** ***Consider and discuss ICO decision notices, in groups***

In groups (break-out rooms) allow 10 minutes for delegates to consider: *What was the case about? FOI or EIR? What did the ICO have to consider? What was our decision? What does the PA need to do next?*

[The examples demonstrate:

- a s10 breach (no steps),
- a reg 5(2) breach (response ordered) *Note: these two can be allocated together to compare/contrast; they're v short*
  
- a s12 refusal (PA upheld) and
- a s12 refusal (complaint upheld, new response ordered).]

Bonus point if anyone can guess why we don't just order the disclosure, in the second s12 case (answer: because we wouldn't normally order disclosure where we have not seen the information).

**Time for Questions/Recap**