

The right to recorded information and requests for documents

Freedom of Information Act Environmental Information Regulations

Contents

Introduction.....	2
Overview.....	2
What FOIA says	3
Defining 'recorded information'	4
Communicating all the information in a document	7
Dealing with requests for documents	8
Requests for specific documents.....	8
Requests for a type of document	9
Documents containing exempt information	12
Email attachments and enclosures to letters	13
Dealing with requests for something other than a document.....	13
Unclear requests	13
The effect of Section 11: Means of communication	14
What the EIR say	14
More information	15

Introduction

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.
2. The Environmental information Regulations 2004 (EIR) give rights of public access to environmental information held by public authorities.
3. Overviews of the main provisions of FOIA and the EIR can be found in [The Guide to Freedom of Information](#) and [The Guide to the Environmental Information Regulations](#).
4. This is part of a series of guidance, which goes into more detail than the Guides, to help public authorities to fully understand their obligations and promote good practice.
5. This guidance provides advice on how to deal with requests for documents.

Overview

- The FOIA provides a right of access to information held by public authorities. It doesn't confer any explicit right to copies of original documents.
- A request for a copy of a document is a valid request for all of the recorded information in that document.
- Most documents contain recorded information over and above the actual wording, such as the design, layout and style of writing.
- This means that in most cases, the only practicable way to communicate all the recorded information in the document to the requester will be to provide a copy of the original.
- If the request is limited to a specific document or documents (for example, the minutes of a particular meeting), then the authority only has to consider the release of the recorded information in the document(s) concerned. It doesn't have to check whether it holds any further relevant information in other records.
- If the request is for a **type** of information or document (for

example *'please provide me with your policy on x'*), and the authority holds a matching document, then it will usually meet the request by considering that document for disclosure. If the authority does not hold a matching document, it has a duty to search for relevant information in other records.

- If the request is for a document that contains exempt information, the authority still has to communicate all the disclosable information in that document to the requester.
- An authority should treat a request for something other than a document (for example, CCTV footage or photographs) in the same manner as request for a document.
- Under Section 11(1) of the Act, the requester can express a preference for the means by which the information is communicated to them. However, there is no provision to express a preference to receive copies of original documents.
- Where an authority has agreed to comply with a requester's preference to inspect a document under Section 11(1)(b), it should provide them with access to the original document, where practicable.
- Under the EIR, requesters have a right to copies of original documents unless it is reasonable to make the information available in another way.

What FOIA says

6. Section 1 states:

- 1.—(1)** Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

7. The requester has two rights under Section 1(1) of the Act:

- to be informed in writing whether the information they have requested is held, and;
 - where it is held, to have the information provided to them.
8. These rights only apply to the **information** held by the public authority. This means that there is no explicit right to copies of original documents.
 9. This is because Section 1 was designed to provide a wide ranging right to information. It ensures that information is covered wherever and however it is recorded. It also means that authorities have to consider the release of information within a document, rather than taking a document by document approach and withholding whole documents when only some of the information is exempt.
 10. Nevertheless, requesters often ask for copies of documents, or refer to documents by name as a means of describing the information they want.
 11. An authority should treat any request for a document as a valid request for all of the recorded information in that document.
 12. Most documents usually contain recorded information over and above the actual wording, such as the design, layout and style of writing. This means that, in most cases, the only practicable way to accurately communicate all the information to the requester is to provide a copy of the original document.

Defining 'recorded information'

13. A request for a copy of a document is a valid request for all of the 'recorded information' in that document.
14. 'Recorded information' can be defined as any feature or characteristic of a document that imparts information or knowledge to the viewer.
15. This means that the term 'recorded information' doesn't just apply to the text; it covers any component of the document that conveys information, for example:
 - **Design and layout:** this can reveal something about the nature of the document. For example, whether it is recorded in the form of a report, spreadsheet or letter.

- **Logos and letterheads:** these can tell the viewer something about the authenticity and legitimacy of the document.
 - **Language:** this can impart information about the tone of the document. For example, if the author has used lots of contrite language, it conveys that the document is apologetic in tone.
 - **Emphasised wording:** the use of underlining, italics or bold font tells the viewer something about the significance of the emphasised words.
 - **Handwriting:** this includes both the writer's handwriting style and their signature.
 - **Annotations and headers and footers:** this includes handwritten comments, markings such as crossed out or circled words and annotations made outside the main body of the text. Any text included in headers and footers also qualifies as information recorded in the document.
 - **Images:** images such as diagrams, photographs and pie charts usually convey some form of information to the viewer.
 - **Email transmission details:** the time and date of transmission and electronic signature are part of the recorded information in an email.
16. Our broad interpretation of 'recorded information' reflects the view taken by the Upper Tribunal in *Independent Parliamentary Standards Authority (IPSA) v Information Commissioner and Leapman UKUT 0033 (ACC) (23 January 2014)*.

Example

In [IPSA v Information Commissioner and Leapman UKUT 0033 \(ACC\) \(23 January 2014\)](#) the requester had asked IPSA for the receipts submitted by several named MP's in support of their expenses claims.

IPSA responded by providing a transcript of the information in the receipts. However, the requester wanted copies of the original documents and referred the matter to the Commissioner.

The Commissioner concluded that recorded information such as design, logos, letterheads, and manuscript comments was missing from the transcript. He therefore found IPSA in breach of Section 1(1)(b) for failing to communicate all the recorded information in the receipts.

IPSA appealed to the Upper Tribunal on the grounds that:

- all the recorded information in the document was included in the transcript; and
- details such as the design, layout and style of the document were not 'recorded information'.

However, the Upper Tribunal dismissed IPSA's appeal commenting that;

'It is to me also trite to note that the wording on a typical receipt or invoice is only part of what a recipient sees when looking at it. Typically there will be verbal and numerical content to be read and understood, but there will also be visual content to be seen, rather than read, but which may also require to be understood for the recipient to have appreciated the whole of the experience, if I may term it that, communicated by the receipt or invoice...' (para 22)

'It may be that other aspects of the Commissioner's analysis depend on the facts of a particular case. But I do not accept, as IPSA argues, that as a matter of law they cannot be regarded as part of the recorded information...Take the example of a handwritten comment on an invoice. An invoice might be presented on which someone has written "rubbish" or, less controversially, "paid in part only – rest not owing". The way in which those words are written and their location on the invoice may convey additional information to the words themselves, for example that they are plainly written by the same person who wrote the invoice as against some other person such as the person claiming repayment of the sum paid or a later person auditing the invoice. It cannot be said that no information is conveyed by location or handwriting in such a case. And if so, it is recorded information.' (paragraph 27)

17. However, it is important to note that the physical characteristics of a document, such as the type of paper it is printed on or the form in which it is held (such as on a hard disk, CD or USB stick) are not recorded information.

18. This also applies to the evidential quality of the document, (for example the value of the original over a photocopy as evidence in legal proceedings).

Example

A parish council receives a request for a copy of its accounts for the month of June 2012.

The council holds this information in a spreadsheet which is stored electronically on a computer disk.

The fact that this spreadsheet is held electronically on disk is a physical characteristic of the document. It is not recorded information about the spreadsheet itself.

The Council would not, therefore, have to provide the information in the form of an electronic computer disk to comply with its Section 1(1)(b) duty to communicate all the recorded information in the spreadsheet.

Communicating all the information in a document

19. In order to comply with Section 1(1)(b), the authority must provide the requester with a complete and accurate copy of **all the recorded information** in the document.
20. In practice, the easiest and most reliable way to do this is to provide the requester with a copy of the original.
21. This is because, in the vast majority of cases, it won't be possible to produce a transcribed version that faithfully reproduces all the recorded information in the document.
22. It is, for example, likely to prove especially difficult to replicate recorded information such as design, handwriting style and images in transcript form.
23. Remember, the authority must communicate **all** the information in the document. It can't just provide the requester with a summary or digest of the contents unless they have specifically requested this under Section 11 of the Act (see our guidance [Means of communicating information](#)).

24. This is not to say that there won't be some cases where it is possible to create an accurate transcript of the document without providing a copy of the original, as in the example below. However, these are likely to be rare.

Example

A local authority receives a request for;

'Copies of all the completed expenses forms held by your organisation',

Rather than providing copies of every single form, the authority could comply with the request by providing one blank form to communicate the layout and design of the document, and a separate list of the information typed in each field to communicate the data entered on the forms.

25. Authorities should keep in mind that providing copies of original documents, rather than transcripts, has the advantage that the requester is more likely to have confidence in the completeness and accuracy of the information. This in turn may reduce the likelihood that the requester will complain about the response.

Dealing with requests for documents

Requests for specific documents

26. If it is clear that the scope of the request is limited to a specific document (or documents), for example;

'Please send me the minutes of the parish council meeting held on 23 October 2012'

'I would like a copy of your annual report for the year 2011-2012'

then the authority's only obligation is to consider the release of the recorded information in that document (or documents) for release.

27. It won't have to check whether it holds any other relevant information elsewhere in its records.

Requests for a type of document

28. Most requesters don't have a detailed knowledge of the information the authority holds or how it organises and names its documents. This means that they often ask for a type of document, rather than a specific record.
29. Examples of a request for a type of document are;

'Please send me a copy of your anti bullying policy'

'I require a copy of your complaints handling procedure'

'I would like copies of any reports you hold on the subject of spending cuts'.

30. If the authority holds a single document that matches the description given, then it should treat this as a valid request for all the recorded information in that document.

Example

A requester makes the following request to a school;

'Please supply me with your pupil selection policy'.

The school does not hold a document called *'Pupil Selection Policy'*.

However it does hold a document called *'School Admissions Policy'* which outlines the criteria for the selection of pupils, and is, to all intents and purposes, its pupil selection policy.

As the *School Admissions Policy* is a match for the document described by the requester, the school is only obliged to consider the release of the information recorded in that document.

It doesn't have to investigate whether it holds any further information about pupil selection policy in other records.

31. In most cases, the authority is only required to consider the release of the information in the matching document.

32. However, if it is clear from the content or context of the matching document, that additional relevant information is also held in other records, then the authority needs to investigate whether that information also falls within the scope of the request.
33. If it does then the authority should consider the release of the matching document **and** the additional relevant information.
34. For clarity, the authority isn't expected to consider the release of the documents in which the additional information is recorded, just the relevant recorded information in those documents.

Example

A university receives a request for '*...a copy of your health and safety policy*'.

The university holds a document entitled '*Health and Safety Policy*' that would clearly fall within the scope of this request.

This health and safety policy makes reference to a separate document called '*Procedures for staff attending external events*'. It describes this as listing '*...the safety and security precautions we expect staff to take when they are setting up events and exhibitions at external venues*'.

From the content of this policy document it is clear that *Procedures for attending external events* also contains information relating to the university's health and safety policy that might fall within the scope of the request.

The university will therefore need to consider both the '*Health and Safety Policy*' document **and** any relevant information in the *Procedures for attending external events* document for release.

35. If the authority doesn't hold any documents of a matching type, it must keep in mind that any **information** in its records that does fall within the objective meaning of the request is still covered, wherever and however it is recorded (remember that Section 1 provides a right to information rather than documents).

Example

A local authority receives a request for;

'A copy of your guidelines for awarding compensation'

The authority does not hold a document matching this description.

However, a section of its *Highway Maintenance Policy* outlines the conditions under which it would award compensation in the event of incidents such as pedestrians tripping on paving stones or cars being damaged by potholes.

This means that the authority does hold some information that falls within the objective meaning of a request for *'guidelines for awarding compensation'*.

It will therefore have to consider the disclosure of the relevant information in its *Highway Maintenance Policy* when responding to this request.

36. This approach follows the line taken by the Information Tribunal in the case of *Cairns v ICO and DVLA (EA/2009/0119 & EA/2009/0102, 2 September 2010)*.

In [Cairns v ICO and DVLA \(EA/2009/0119 & EA/2009/0102, 2 September 2010\)](#) the requester had asked the DVLA for a copy of the enforcement policy for its Continuous Registration Scheme.

The DVLA refused this information on the grounds that it did not hold a policy for the scheme.

However, the Tribunal found that some of the contents of the DVLA's internal guidance materials for staff constituted information about an enforcement policy for the scheme, and should be disclosed. In reaching this decision it commented that;

'It is a truism that FOIA applies to information and not documents. And although the terms of the request may have suggested that the Appellant was seeking a copy of a

particular policy document, we do not believe that this absolved DVLA from considering what information it held about its policy in this area, even if recorded with other information falling outside the scope of the request...'
(Paragraph 25)

37. Only where the authority is completely satisfied that it does not hold any relevant information falling within the scope of the request should it issue a 'not held' response.

Documents containing exempt information

38. Section 1 was intentionally drafted to provide requesters with a right of access to information, rather than documents. This compels authorities to consider the relevance and sensitivity of each piece of information in a document, instead of taking a broad-brush document-by-document approach.
39. This intention was made clear by Lord Falconer during the passage of the FOI Bill:
- 'We have been discussing whether the Bill in effect permits partial disclosure. It will in fact require that when some of the information that is requested is exempt but other information is not. The right of access in Clause 1 involves information that is recorded in any form. That means that the right of access attaches to the content of documents or records rather than to the documents or records themselves. When a document contains a mixture of disclosable and non-disclosable information, the disclosable information must be communicated to the applicant.'* (Lords Hansard 17 October 2000 at column 931)
40. It follows that an authority cannot withhold the entire contents of a document on the grounds that it contains some information that is exempt. It still has a duty to communicate all the disclosable information in the document to the requester.
41. The most practicable way to do this is to provide a copy of the original document with the exempt material redacted. This is because, as discussed earlier, it isn't usually possible to replicate all the recorded information in a document in transcript form.

42. This is even more of an issue when only some extracts of a document are disclosable. Information about how the extracts fitted into the original document and interacted with each other will almost certainly be missing from any transcribed version. This makes it extremely unlikely that an authority could completely and accurately communicate all the disclosable information in the document in transcript form.

Email attachments and enclosures to letters

43. If the requester asks for a copy of an email, and that email contains an electronic attachment, that attachment also falls within the scope of the request.
44. This means that the authority needs to consider the release of all the recorded information in the email **and** all the recorded information in the attached document. The same principle also applies to enclosures to letters.

Dealing with requests for something other than a document

45. Most authorities hold material that isn't in the form of a document. For example CCTV footage, photographs and training videos.
46. An authority should treat a request for material that is not held in document form in exactly the same manner as a request for a document; the authority has the same duty to communicate a true and accurate copy of the information to the requester.
47. However, the nature of such material means it will probably be impossible to communicate the information in anything other than its original form. For instance, it is hard to envisage how an authority could accurately convey all the visual information in a CCTV recording or photograph in words.
48. It is therefore likely that the only feasible way to communicate the information is to provide copies of the original material.

Unclear requests

49. The authority must go back to the requester and ask for further clarification in any case where:

- it can't locate or identify the requested information; or
- it isn't clear whether the request is for information or copies of specific documents; or
- it isn't clear whether the requester wants all, or only part of the information in a document.

More detailed information on how to deal with unclear requests can be found in our guidance [Interpreting and clarifying requests](#).

The effect of Section 11: Means of communication

50. Section 11 of the Act gives the requester the right to express a preference for the means by which the information is communicated (for example electronic, hard copy or audio form). However, there is no provision to express a preference to receive copies of original documents.
51. However, if the requester expresses a preference to inspect the original documents (or copies of those documents) then we would expect the authority to provide them with a reasonable opportunity to view the originals (or copies), where practicable.
52. More detailed advice on the application of Section 11 can be found in our guidance [Means of communicating information](#) (section 11).

What the EIR say

53. Regulation 6(1) states:

6.—(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format.

54. Article 4(1) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Aarhus Convention) from which the EIR are derived states:

4.—(1). Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public...including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

- (a) Without an interest having to be stated;
- (b) In the form requested unless:
 - (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or
 - (ii) The information is already publicly available in another form.

55. This means that under the EIR the right to copies of original documents is explicit, unless it is reasonable for the public authority to make the information available in another form or format. See our guidance [Form and format of information \(Regulation 6\)](#) for more details.

More information

56. Additional guidance is available on [our guidance pages](#) if you need further information on the public interest test, other FOIA exemptions, or EIR exceptions.
57. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.

58. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
59. If you need any more information about this or any other aspect of freedom of information, please [contact us](#), or visit our website at www.ico.org.uk.