

# Time limits for compliance

## Environmental Information Regulations

### Contents

Introduction.....	2
Overview.....	2
What the EIR say .....	3
Calculating the date of receipt.....	4
The definition of a working day .....	4
Requests received on non-working days .....	5
Requirement to respond as soon as possible .....	6
Duty to make information available on request .....	7
The duty to confirm or deny.....	8
Time limits for refusing a request .....	9
Requesting clarification under Regulation 9(2) .....	10
Assistance provided outside Regulation 12(4)(c).....	12
Applying an extension for complex and voluminous requests .....	12
Informing the requester that the information is not available in preferred the format .....	13
Pausing the clock to charge a fee .....	14
Transfer of requests.....	16
Good practice .....	17
More information .....	18

## Introduction

1. The Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities.
2. An overview of the main provisions of the EIR can be found in [The Guide to the Environmental Information Regulations](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.
4. This guidance outlines the time limits for complying with a request made under the EIR.

## Overview

- A public authority holding the requested information has a duty to communicate that information to the requester *'as soon as possible and no later than 20 working days after the date of receipt of the request'*.
- Public authorities also have a duty to act *'as soon as possible and no later than 20 working days after the date of receipt of the request'* when;
  - issuing a refusal notice;
  - informing the requester that the information cannot be made available in the format requested;
  - offering advice and assistance to help a requester clarify a request that has been formulated in too general a manner;
  - notifying the requester that it requires an extension of time to deal with a request which is complex or voluminous.
- If the public authority intends to make an advance charge for the information, then it has an obligation to notify the applicant, advise them of the required fee and direct them to its schedule of charges *'no later than 20 working days after the date of receipt of the request'*.
- An authority can extend the time for compliance by an additional 20 working days to allow it more time to respond to a

complex or voluminous request.

- If an authority refuses a request as being formulated in too general a manner, and, having offered advice and assistance to the requester, receives sufficient clarification to enable it to identify and locate the requested information, the 20 working day timescale for providing a response begins the day after that clarification is received.
- A working day means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

## What the EIR say

5. Under the EIR, a public authority has a duty to inform the requester whether it holds the information and if so, to communicate the requested information to them *'as soon as possible, and no later than 20 working days after the date of receipt of the request.'* [Regulation 5(2)]
6. The EIR also specify that public authorities have a duty to comply with the following regulations *'as soon as possible and no later than 20 working days after the date of receipt of the request'*;
  - Regulation 6(2)(a) – requirement for the public authority to explain why it cannot make information available in the form or format requested.
  - Regulation 7(1)(3) – requirement to notify the requester that the authority needs an extension of time to deal with a request which is complex or voluminous.
  - Regulation 9(2)(a) – requirement to offer advice and assistance where a request has been formulated in too general a manner.
  - Regulation 14(2) – requirement to issue a refusal notice when a request is being refused.
7. Where Regulation 8(4) applies, (the obligation to notify the requester that an advance payment is required), the EIR state that the authority must comply *'no later than 20 working days after the date of receipt of the request'*.

8. The EIR permit an extension to the time for compliance for Regulations 5(2), 6(2)(a) and 14(2), from 20 to 40 working days, where the authority believes that the complexity and volume of the request would make it impractical to comply or reach a decision about whether to refuse the request, within 20 working days.
9. Unlike the Freedom of Information Act, there is no provision to extend the time for compliance to further consider the public interest test, nor do the EIR make any provision for variations to the time limits for certain categories of information or types of organisation.

## Calculating the date of receipt

10. Where the EIR make reference to the '*date of receipt of the request*' that date will be either;
  - the day the request is physically or electronically delivered to the public authority or directly into the inbox of a member of staff; **or**
  - if the request was previously refused as formulated in too general a manner, the day on which the authority receives sufficient clarification to enable it to identify and locate the requested information.
11. It is not to be regarded as the date on which the request is passed on to the appropriate person within the authority, such as the Freedom of Information Officer, for processing.
12. An exception to this will be where the request has been emailed to an absent member of staff, and this has generated an 'out of office' message with instructions on how to re-direct the message to another contact.
13. Where this is the case, the date of receipt will be the day the request arrives in the inbox of that contact.

## The definition of a working day

14. A working day can be defined as any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

15. Authorities should take particular note that any day which is a bank holiday in any one of the four nations comprising the UK will be a non-working day for the purposes of the EIR.
16. For example, St. Patrick's Day can be counted as a non-working day in all countries covered by the legislation, even though it is only a bank holiday in Northern Ireland, and not in England Scotland or Wales.
17. Where authorities are closed for privilege days in addition to bank holidays, these will not count as non-working days.
18. For the purposes of the Regulations, the 'working day' will end at midnight regardless of the opening hours of the authority. Therefore, any request which arrives before that point in time should be regarded as having been received that day.
19. This principle was established in an FOIA Tribunal case, *Berend v ICO & London Borough of Richmond upon Thames* (EA/2006/0049 & 50, 12<sup>th</sup> July 2007). Here the Tribunal found that *'There is no definition within the Act as to the length of a day and in the absence of any such definition, we are satisfied that a day ends at midnight...'* (Para 63)
20. As Regulation 2(1) states that the meaning of a 'working day' under EIR is the same as defined in the FOIA, this principle will also apply to EIR requests.

### **Requests received on non-working days**

21. The EIR do not stipulate that the date of receipt must be a working day. It therefore follows that the date of receipt can also be a non-working day such as a weekend or bank holiday.
22. When an EIR request is received on a non-working day, the clock will still start on the following working day.
23. However, if the following day is another non-working day then the clock will start on the next working day after that.

#### **Example 1**

A public authority which is closed at weekends receives a request on a Saturday. As the time for compliance only commences on the next working day, the clock will start on the following Monday.

#### **Example 2**

The same public authority receives a request on Easter

Sunday. As the following Monday is a bank holiday, the clock will begin on the next working day after that, which in this case would be Tuesday.

## Requirement to respond as soon as possible

24. Where a Regulation specifies the requirement to respond 'as soon as possible' the authority must comply with that Regulation as soon as is reasonably practicable.
25. Whilst the duty to respond *as soon as possible* will always be linked to the obligation to comply *no later than 20 working days after receipt of the request*, it should be treated as a separate requirement.
26. An authority will therefore need to both respond as soon as possible *and* within 20 working days to comply with a Regulation which specifies both these criteria.
27. Authorities should therefore regard the 20 working day limit as a 'long stop', in other words the latest possible date on which they can comply with the requirement.
28. It also follows that an authority which complies close to, or on, the final day of the 20 working day limit ought to be able to both account for, and justify, the length of time taken to meet the obligation concerned.

### **Example**

In Decision Notice [FER0348473](#) the complainant maintained that Gelding Borough Council had failed to comply with his request for information concerning building regulations approvals, certificates and notices connected to a specific property as soon as possible. The council had provided its response 17 working days after the date of receipt of the request.

In its submissions to the Information Commissioner, the council explained that the request had first been passed to an FOI officer, who then asked the building control department to check whether any relevant information was held. That search took 12 working days and entailed interrogating the management system; searching microfiche and CDs, and manually sifting through hard copy records dating back to 1974. Once he had verified the search results, the building control manager discussed them with an FOI officer and the

response was issued that same day. The council also pointed out that the building control department was responsible for handling applications and inspection requests, as well as other functions such local land searches and responding to enquiries, and they had considered it unreasonable to give EIR requests a higher priority than this work.

The Information Commissioner ruled that the council had replied as soon as possible, stating that:  
*'The test of whether a public authority has complied "as soon as possible" is a subjective one, because it could be argued that if the Council set aside all of its other tasks and focuses solely on complying with the request, a response could be sent very promptly. However, the Commissioner accepts that a public authority is entitled to balance its duties under the EIR with its other responsibilities and commitments. He also accepts that it was appropriate for the Council to delegate the task of searching relevant records to staff that have experience and knowledge of this area. He considers that the Council therefore complied with this request as quickly as possible particularly given its obligations to comply with a wide range of responsibilities.'* (para 32)

## Duty to make information available on request

**5.—(1)** Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

**5.—(2)** Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

29. Under Regulation 5(1) public authorities have a duty to make environmental information available on request.
30. This means that where an authority holds the requested information and is not relying on an exception or Regulations 6(2)(a) or 8(4), it must provide that information to the requester as soon as possible and no later than 20 working days after the date of receipt of the request.

31. The 20 working day clock begins *the day after* the request is received. However, if the authority has previously refused the request for being formulated in too general a manner under Regulation 9(2)(a), the clock will begin the day after the requester provides sufficient clarification to allow the organisation to identify and locate the information. Further information about the application of Regulation 9(2)(a) can be found later in this guidance.

## The duty to confirm or deny

32. We consider that public authorities have an implicit duty under the EIR to confirm or deny whether the information is held as soon as possible and within 20 working days.

33. It therefore follows that a general response (such as a holding letter or acknowledgement) issued within 20 working days, but which fails to confirm or deny whether the information is held, or provide information, will not be sufficient to comply with the requirements of the Regulations.

34. If the authority holds the requested information then it will fulfil its 'duty to confirm' by (as soon as possible and within 20 working days);

- providing the information under Regulation 5(2); **or**
- issuing a refusal notice under Regulation 14 explaining that the information is held but is being withheld under an exception; **or**
- notifying the requester that the information cannot be provided in the form or format requested under Regulation 6(2)(a); **or**
- notifying the requester that a fee is required under Regulation 8(4).

35. Where the authority does not hold the information, it will fulfil its 'duty to deny' by refusing the request under Regulation 12(4)(a) [the exception for information that is not held at the time for the request] and issuing a refusal notice as soon as possible and within 20 working days of the date of receipt of the request.

36. If the information is subject to an exception from the duty to confirm or deny, then the authority must issue a refusal notice



as soon as possible and within 20 working days, stating that it can neither confirm nor deny whether the information is held.

37. For further information on refusing requests where there is an exception from the duty to confirm or deny, please read our guidance [Refusing a request under the EIR](#).

## Time limits for refusing a request

38. Regulations 14(1) and 14(2) state:

**14.—(1)** If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

39. If public authority has chosen to refuse a request under one of the exceptions listed in Regulations 12(1) and 13(1) then it must issue a refusal notice as soon as possible and no later than 20 working days after the date of receipt of the request.
40. The refusal notice has to be in writing and must;
- Explain the reasons for the refusal including the exception(s) being relied upon and any factors that were taken into account in reaching a decision under the public interest test;
  - inform the requester of their right to make representations if they disagree with the decision;
  - inform the requester of their right to complain to the ICO, including the relevant contact details
41. If the exception(s) only cover part of the information then the authority must aim to extract or summarise the non-excepted information and provide it to the requester within the 20 working day time for compliance, unless it is not reasonably capable of being separated.

## Requesting clarification under Regulation 9(2)

**9.—(2)** Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

(a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and

(b) assist the applicant in providing those particulars.

**9.—(4)** Where paragraph (2) applies, in respect of the provisions in paragraph (5), the date on which the further particulars are received by the public authority shall be treated as the date after which the period of 20 working days referred to in those provisions shall be calculated.

(5) The provisions referred to in paragraph (4) are—

(a) regulation 5(2);

(b) regulation 6(2)(a); and

(c) regulation 14(2).

42. Under Regulation 12(4)(c) of the EIR a public authority may refuse a request that has been formulated in too general a manner.
43. However, it can only do so where it has also fulfilled its obligation under Regulation 9 to offer the requester advice and assistance to help clarify the request.
44. Regulation 9(2) states that the authority must offer that advice and assistance within 20 working days of the date of receipt of the request.

The authority must still issue a refusal notice within 20 working days of receipt of the request explaining that it has applied Regulation 12(4)(c).

As this refusal is conditional on compliance with Regulation 9, the authority must offer the advice and assistance either **before** or at the **same time** that it issues the refusal notice.

45. If, following this, the requester provides sufficient details to enable the authority to identify and locate the information, the time limit for providing the information will reset to 20 working days with the clock starting the day after the authority receives the required clarification.
46. This will also reset the time for compliance for;
- Regulation 6(2)(a) – the time limit for explaining why the authority is not making information available in the form or format requested;
  - Regulation 14(2) – the time limit for issuing a formal refusal notice to the requester.
47. In effect, therefore, the clarified request is treated as a new request.

### **Example**

On 5 August a local authority receives the following request relating to a derelict listed building which is under threat of demolition;

*'I would like to know what steps the council is taking to secure this building'.*

The authority considers this request to be vague because in this context *'secure'* could relate to

- the security of the building, **or**
- maintaining its structural integrity, **or**
- efforts to save it from demolition.

The authority therefore issues a refusal notice on August 11 stating that it is applying Regulation 12(4)(c) to the request.

At the same time the notice is issued, the authority asks the requester to clarify what he meant by *'secure'*, thereby fulfilling its obligation under Regulation 9(2) to offer advice and assistance within 20 working days.

The requester contacts the authority again on August 14 to confirm that by *'secure'* he meant *'maintain its structural integrity'*.

The authority now has sufficient details to identify and locate the requested information. The time for compliance therefore resets to 20 working days with the clock starting on the day after the required clarification was received, which in this case is August 15.

### **Assistance provided outside Regulation 12(4)(c)**

48. Regulation 12(4)(c) is only applicable in cases where the authority requires further clarification in order to comply with the request.
49. If the request is sufficiently clear that the information being sought can be identified and located, and the authority is offering assistance for any other reason, for example to ask if the requester is interested in any other information, then the clock does not stop but continues to run from the original date of receipt.

## Applying an extension for complex and voluminous requests

**7.—**(1) Where a request is made under regulation 5, the public authority may extend the period of 20 working days referred to in the provisions in paragraph (2) to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.

(2) The provisions referred to in paragraph (1) are—

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2)

(3) Where paragraph (1) applies the public authority shall notify the applicant accordingly as soon as possible and no later than 20 working days after the date of receipt of the request.

50. Regulation 7(1) provides that where a request is particularly voluminous or complex, the public authority may extend the time for compliance for making the information available from 20 working days to 40 working days.
51. When a public authority claims this extension the new 40 working day timescale will also apply to;
  - Regulation 6(2)(a) – the time limit for explaining why the authority is not making information available in the form or format requested;
  - Regulation 14(2) – the time limit for issuing a formal refusal notice to the requester.
52. A public authority may only apply the extension where it reasonably believes it will require additional time to locate and provide the information because;
  - the requester has asked for a large amount of complex information; **AND**
  - it would not be practical to provide the information or make a decision about whether to refuse the request within 20 working days.
53. Unlike the FOIA, there is no provision to claim an extension of time specifically to consider the public interest test.
54. Where a public authority is applying an extension, it must notify the requester of this as soon as possible and within 20 working days after the date of receipt of the original request.
55. This notification should be as specific as possible in explaining the reasons for the delay and indicating when the requester is likely to receive the information.

## Informing the requester that the information is not available in preferred the format

**6.—(2)** If the information is not made available in the form or format requested, the public authority shall—

(a) explain the reason for its decision as soon as possible and no later than 20 working days after the date of receipt of the request for the information;

(b) provide the explanation in writing if the applicant so requests; and

(c) inform the applicant of the provisions of regulation 11 and of the enforcement and appeal provisions of the Act applied by regulation 18.

56. Regulation 6(1) states that, where a requester has asked for the information to be provided in a particular form or format, the authority must meet that requirement unless;
- it cannot supply the information in the requested format; **or**
  - the information is already publically available and easily accessible in another format.
57. Under Regulation 6(2) an authority that elects not to make the information available in the requester's preferred format must contact them to explain the reasons for its decision as soon as possible and no later than 20 working days after the date of receipt of the request.
58. This explanation must include details of the authority's appeals procedure and should be provided in writing if the requester specifies this. If there is a choice of alternative forms/formats, then it is good practice to inform the applicant of any other options that may be available.
59. The requester may specify their preferred form or format at any time between the submission of the request and the authority's response. However, we recognise that it may be unreasonable to expect an authority to provide the information in that format within the time for compliance if the requester only makes their preference known towards the latter end of the 20 working day timescale.

## Pausing the clock to charge a fee

**8.—(4)** A public authority may require advance payment of a charge for making environmental information available and if it does it shall, no later than 20 working days after the date of receipt of the request for the information, notify the applicant of this requirement and of the amount of the advance payment.

(5) Where a public authority has notified an applicant under

paragraph (4) that advance payment is required, the public authority is not required—

(a) to make available the information requested; or

(b) to comply with regulations 6 or 14,

unless the charge is paid no later than 60 working days after the date on which it gave the notification.

(6) The period beginning with the day on which the notification of a requirement for an advance payment is made and ending on the day on which that payment is received by the public authority is to be disregarded for the purposes of determining the period of 20 working days referred to in the provisions in paragraph (7), including any extension to those periods under regulation 7(1).

60. Under Regulation 8(4) a public authority can ask the requester for an advance payment before releasing the information.
61. However, an authority may only charge for environmental information if it has published a schedule of charges under Regulation 8(8) containing details of when it may or may not charge.
62. If a public authority elects to charge an advance fee, it must within 20 working days after the date of receipt of the request;
  - notify the requester that it intends to charge for the information;
  - advise them of the amount required; and
  - provide a copy of its schedule of charges, or advise the requester where a copy may be obtained.
63. Under Regulation 8(6), the period starting from the day on which the notification of a requirement for an advance payment is made and ending on the day the payment is received can be disregarded from any calculation of the 20 working day time limit.
64. The Information Commissioner's interpretation of '*the day on which the notification of a requirement for an advance payment is made*' is the date on which the authority sends that notice to the requester.

65. The authority should therefore pause the 20 working day clock on the day it issues its request for payment. The clock will restart again the day after the required fee is received.
66. If the requester elects to pay by cheque then the clock will only restart once this has cleared. However, cheques should be banked promptly to ensure there is no undue delay in processing the request.
67. The requester must make their payment no later than 60 working days after the date the authority issues notification that it requires a fee. If they fail to do so then the clock stops permanently as the authority is no longer obliged to proceed with their request.

## Transfer of requests

68. Regulations 10(1) and 10(2) state:

**10.**—(1) Where a public authority that receives a request for environmental information does not hold the information requested but believes that another public authority or a Scottish public authority holds the information, the public authority shall either—

(a) transfer the request to the other public authority or Scottish public authority; or

(b) supply the applicant with the name and address of that authority,

and inform the applicant accordingly with the refusal sent under regulation 14(1).

(2) Where a request is transferred to a public authority, for the purposes of the provisions referred to in paragraph (3) the request is received by that public authority on the date on which it receives the transferred request.

(3) The provisions referred to in paragraph (2) are—

(a) regulation 5(2);

(b) regulation 6(2)(a); and

(c) regulation 14(2)



69. If the public authority does not hold the information itself, but believes it to be held by another public authority or Scottish public authority, then it must refuse the request under Regulation 12(4)(a) and issue a refusal notice which either;
- informs the requester that it has decided to transfer the request to that other authority; **OR**
  - provides the requester with the name and address of the other authority.
70. The refusal notice must be sent under Regulation 14(1), which means the authority must issue it as soon as possible and no later than 20 working days after the date of receipt of the request.
71. Once the notice has been issued, the original authority has no further obligations.
72. With respect to the receiving authority, the time for compliance for the regulations below starts 20 working days after the date of receipt of the transferred request;
- Regulation 5(2)(a) – the time limit for making environmental information available.
  - Regulation 6(2)(a) – the time limit for explaining why the authority is not making information available in the form or format requested.
  - Regulation 14(2) – the time limit for issuing a formal refusal notice to the requester.
73. It is good practice for the original authority to facilitate the transfer as soon as practicable. However, if it has reasonable grounds to believe the requester would be likely to object to a transfer, it should not continue without obtaining his or her consent.
74. Further good practice advice on transferring a request can be found in Part III of the [Regulation 16 Code of Practice](#).

## Good practice

75. Authorities may wish to consider the following good practice advice to help them handle requests promptly and efficiently;

- It may be helpful to provide and publicise a separate e-mail address for FOI/EIR requests, although there will still be a duty to deal with requests received anywhere within the authority.
- To cover periods of absence, it would be advisable for staff to use the automated out of office facility for emails and to provide alternative contact details.
- Where an alternative contact has been provided in an 'out of office message', that contact should advise the original recipient of the action taken in respect of the request.
- It would be good practice to acknowledge receipt of requests and to refer to the 20 working day time limit, so that applicants know their request is being dealt with.

## More information

76. 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.
77. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
78. If you need any more information about this or any other aspect of freedom of information, please [contact us](#): see our website [www.ico.org.uk](http://www.ico.org.uk).