

Refusing a request under the EIR

Environmental Information Regulations

Contents

Introduction.....	2
Overview.....	2
When can a public authority refuse a request?	3
Time limits for issuing a refusal notice	3
What to include in a refusal notice.....	4
The reasons why the request has been refused	4
Details of the complaints procedure	6
When regulation 12(4)(d) is relied upon: details of any other public authority that is known to be preparing the requested information.	7
When regulation 12(4)(a) is relied upon: details of any other public authority to whom the request may be redirected, or to whom the request has been transferred.	8
The duty to confirm or deny.....	9
Regulation 12(5)(a): adverse effect upon international relations, defence, national security, or public safety	10
Regulation 13(5): personal data	10
Regulation 12(4)(b): the request for information is manifestly unreasonable	10
Refusing a request for the applicants own personal information....	11
Refusal notices and the duty to provide advice and assistance	11
More information	12

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 explains when and how to refuse a request for environmental information.

Overview

- A public authority may only refuse a request if one of the exceptions in regulations 12 or 13 applies.
- Where a public authority has decided to refuse a request under regulation 12 or 13, it must normally issue its written refusal notice no later than 20 working days after the date of receipt of the request. The time limit may be extended to 40 working days if the information requested is particularly complex and voluminous.
- In most circumstances the refusal notice must state the exception being relied upon and explain the reasons for the decision, including the details of any public interest test.
- It should also advise the requester of the authority's internal complaints procedure and notify them of their right to complain to the Information Commissioner.
- If a request has been refused on the grounds that the information is incomplete or documents are unfinished, then the refusal notice should provide the requester with details of any other public authority known to be preparing that information, along with its estimated date for completion.
- If a public authority does not hold the requested information but believes that another public authority

does, then its refusal notice should either provide the requester with details of the public authority that it believes holds the information, or advise the requester that the request has been transferred.

- The public authority will normally need to confirm that it does hold information, even if it is refusing to provide it.
- If a public authority does not hold any information then it will usually need to issue a refusal notice citing regulation 12(4)(a).
- There is no need to issue a refusal notice when the request is for the requester's own personal data. Public authorities should simply treat such requests as subject access requests (SARs) under the Data Protection Act 1998.
- It will be good practice for public authorities to provide appropriate advice and assistance at the same time as issuing a refusal notice.

When can a public authority refuse a request?

5. When a public authority receives a request for environmental information it has to either provide the requester with the information or issue a written refusal notice explaining why it is refusing to do so.
6. It may only choose to refuse a request if one of the exceptions in regulation 12(4) or 12(5) applies and the public interest in maintaining the exception outweighs that in disclosure, or if regulation 13 applies.
7. Public authorities can find detailed guidance on how the exceptions and public interest test in the EIR work, and on the individual exceptions available, in the [Guidance Index](#).

Time limits for issuing a refusal notice

8. Regulations 14(1) and (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.

(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.

9. A public authority must issue its refusal notice as soon as is practicable and in most cases no later than 20 working days after the date it received the request. It should not wait until the 20th day to respond if it can reasonably provide the notice earlier.
10. The EIR differs from the Freedom of Information Act in that there is no provision to increase this time limit specifically to consider the public interest test.
11. However, under regulation 7, an authority can extend the period to 40 working days in any case where the complexity and volume of the requested information means it is not practicable to make a decision about whether to refuse the request within the 20 working day period.
12. If the authority does require an extension, it must still inform the requester of this within the initial 20 working day limit.
13. When notifying the requester of the extension, it is good practice to explain the reasons for the delay and to provide them with some indication of when the final decision will be reached.

What to include in a refusal notice

14. The refusal notice should firstly make it clear that the request was considered under the Environmental Information Regulations 2004.

The reasons why the request has been refused

15. Regulation 14(3) states:

(3) The refusal shall specify the reasons not to disclose the information requested, including (a) any exception relied on under regulations 12(4), 12(5) or 13; and

(b) the matters the public authority considered in reaching its

decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

16. The public authority must specify which regulations it has applied and will normally need to explain how it reached its decision. The notice should include the full regulation number, and precise wording of the exception or regulation concerned.
17. If the authority is relying on any of the exceptions in regulation 12(4) it will need to explain why it believes that the request meets the description given within the exception.
18. If the authority is relying on any of the exceptions listed in regulation 12(5) then it will usually need to explain the adverse effect it believes would result from disclosure, and exactly why disclosing the requested information would result in that adverse effect.
19. The only situation in which a public authority is not required to explain why a 12(5) exception applies is when the national security element of regulation 12(5)(a) has been claimed. In this situation a public authority may choose to issue a ministerial certificate instead. Such a certificate would have to be signed by a Minister of the Crown and certify that the disclosure would adversely affect national security and would not be in the public interest. For more explanation, public authorities should see our guidance Regulation 12(5)(a)-international relations, defence, national security or public safety.
20. If the public authority is relying on regulation 13 then it will need to explain why this regulation applies by referring to the relevant provisions from the Data Protection Act 1998.
21. If the authority has applied different exceptions to different part of the requested information then the refusal notice will need to explain the reasoning behind this.
22. If the public authority is dealing with a multi-part request, or is refusing several requests at the same time, then the refusal notice will need to address each individual request or part of a request separately.
23. If the authority has carried out a public interest test then, unless it has issued a ministerial certificate, it will need to

provide the requester with the details of how that test was applied.

24. All of the exceptions in regulations 12(4) and (5) are subject to a public interest test; regulation 13 is not. However, the Commissioner accepts that if a public authority is refusing a request because it does not hold any information then it will not be able to carry out a meaningful public interest test. Public authorities are not therefore expected to include consideration of the public interest test in a regulation 12(4)(a) refusal notice.
25. The refusal notice should therefore normally include the following elements:
 - the regulation under which the request has been refused;
 - the reasons why that regulation applies;
 - a breakdown of the public interest factors which were taken into account; and
 - the reasoning behind the authority's conclusion that the public interest lay in maintaining the exception.
26. Public authorities should not to make assumptions about the requester's level of background knowledge when drafting a refusal notice. It is therefore good practice to use plain English and avoid the use of jargon or abbreviations whenever possible. The explanation in the refusal notice should also be detailed enough to give the requester a real understanding of why the information has been withheld. In most cases it will be possible to do this without any problem. There should be relatively few cases where it isn't possible to explain in detail why the information has been withheld, because to do so would undermine the purpose of claiming the exception.
27. If the reasons for the decision are particularly complex or several exceptions were applied then it may be advisable to split the notice into shorter sub sections to make it easier for the requester to follow.

Details of the complaints procedure

28. Regulation 14(5) states:

(5) The refusal shall inform the applicant:

(a) that he may make representations to the public authority under regulation 11; and

(b) of the enforcement and appeal provisions of the Act applied by regulation 18.

29. The refusal notice must inform the requester that they have the right to complain to the public authority if they disagree with the decision, as long as they do so in writing and within 40 days of receipt of the refusal notice. It should also contain details of the authority's internal complaints procedure including:
- contact information for the relevant department or member of staff;
 - an outline of the appeals process; and
 - timescales for dealing with complaints.
30. The notice must also advise the requester of their right to make a complaint to the Commissioner and should include the relevant contact details for the ICO.
31. Detailed guidance on how to respond a complaint about the handling of an EIR request can be found in our guidance on internal reviews under the EIR.

When regulation 12(4)(d) is relied upon: details of any other public authority that is known to be preparing the requested information.

32. Regulation 12(4)(d) allows a public authority to refuse a request which would require it to provide any of the following:
- Materials still in the course of completion.
 - Unfinished documents.
 - Incomplete data.
33. For further details of when and how this exception may be applied, public authorities should refer to our guidance [Regulation 12\(4\)\(d\): Material in the course of completion, unfinished documents and incomplete data.](#)
34. Regulation 14(4) states:

(4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

35. Where an authority does decide to refuse the request under 12(4)(d) then regulation 14(4) provides that, if it knows that another public authority is going to 'finish' or 'complete' the requested information, then it must include the following additional details in its refusal notice:

- The name of any other public authority preparing the information; and
- the estimated time in which that information will be finished or completed.

When regulation 12(4)(a) is relied upon: details of any other public authority to whom the request may be redirected, or to whom the request has been transferred.

36. Regulation 10 states:

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;

(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).

37. If the public authority does not hold the requested information itself, but has reason to believe that it is held by another authority (including any which are based in Scotland), then it can refuse the request under regulation 12(4)(a), but it should

also either transfer the request to the other authority or provide the requester with its details so that they can submit a new request.

38. More detailed good practice advice on when and how to transfer a request can be found in Part VI of the [Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004](#).
39. When the authority has chosen not to transfer the request but to provide another public authority's details, its refusal notice should:
 - explain that the information is held by another authority;
 - provide that authority's contact details; and
 - advise the requester that they will need to resubmit their request to that authority.
40. When the authority has chosen to transfer a request then the refusal notice should:
 - provide the requester with the name of the public authority to which the request has been transferred;
 - provide that authority's contact details; and
 - provide the date on which the transfer was made.
41. The refusal notice should be issued as soon as possible after the transfer has been completed.
42. Once the request has been transferred, the second authority must comply with its EIR obligations in just the same way as if it had received the request direct from the requester.

The duty to confirm or deny

43. In most cases the refusal notice will need to confirm that the information is held before going on to explain why it has not been provided. If the information is not held then the request should normally be refused by issuing a refusal notice citing regulation 12(4)(a).

44. There are, however, some situations in which a public authority can issue a refusal notice which neither confirms nor denies whether the requested information is held.

Regulation 12(5)(a): adverse effect upon international relations, defence, national security, or public safety

45. Regulation 12(5)(a) provides an explicit exclusion from the duty to confirm or deny whether information is held in certain circumstances. More details on how this exclusion works can be found in our guidance [Regulation 12\(5\)\(a\): international relations, defence, national security or public safety](#).
46. If a public authority wishes to refuse to confirm or deny whether information is held under regulation 12(5)(a) then it will need to either; issue a refusal notice explaining why the exclusion is needed and why the public interest favours maintaining the exclusion, or, if the exclusion is being claimed because of an effect of an adverse effect on national security, issue a ministerial certificate instead.

Regulation 13(5): personal data

47. Under regulation 13(5) a public authority can issue a refusal notice which neither confirms nor denies whether it holds personal data about a third party in any circumstance where:
- confirming that information is held would breach the Data Protection Act; or
 - the subject of that information would not themselves be entitled, under the Data Protection Act, to know whether their personal data is being processed.

Regulation 12(4)(b): the request for information is manifestly unreasonable

48. There is nothing in the EIR which specifically allows public authorities to refuse to confirm or deny whether information is held in respect of a request that has been refused as manifestly unreasonable. In most cases public authorities will be expected to confirm that information is held even if the request is being refused as manifestly unreasonable.
49. However, the Commissioner recognises that if the burden involved in even establishing whether the information is held is in itself manifestly unreasonable, then it may be acceptable to

issue a refusal notice relying on regulation 12(4)(b) that doesn't state whether the information is held.

Refusing a request for the applicants own personal information

50. Regulation 5(3) exempts public authorities from the requirement to make available environmental information which is also the requester's personal data.
51. We would not expect a public authority receiving such a request to issue a refusal notice under the EIR, but would instead expect it to advise the requester within 20 working days that it intends to treat the request as a subject access request (SAR) made under the Data Protection Act.
52. The requester should not be required to submit a separate information request, although as with any SAR, the authority will be entitled to write back to the requester if it requires further identification or a fee before it can process the request.
53. More information about how to deal with a request for personal information can be found in our [Guide to Data Protection](#).

Refusal notices and the duty to provide advice and assistance

54. There is no explicit requirement for a refusal notice to include advice and assistance for the requester.
55. However, under regulation 12(4)(c) public authorities can only refuse requests formulated in too general a manner if they have provided reasonable advice and assistance. Similarly the ICO will normally expect public authorities that refuse manifestly unreasonable requests under regulation 12(4)(b) because of the costs involved, to provide advice and assistance to help the requester submit a less burdensome request.
56. It is therefore good practice for public authorities refusing requests for the above reasons to provide appropriate advice and assistance at the same time as issuing a refusal notice.

More information

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 The Environmental Information Regulations, please contact us: see our website www.ico.org.uk.
60. This guidance relates only to the EIR. If the information is not environmental information, the EIR are not relevant and public authorities will instead need to consider the issue under the Freedom of Information Act (FOIA).

Advice on how to deal with a request under the FOIA can be found in our [Guide to Freedom of Information](#).