

Internal communications (regulation 12(4)(e))

Environmental Information Regulations

Contents

Introduction.....	2
Overview.....	2
What the EIR say	3
General principles of the exception	3
'Communications'	4
'Internal' communications.....	5
Communications between central government departments	5
Executive agencies, NDPBs and wholly owned companies	6
Communications between public authorities	7
Communications with a third party	7
Communications sent both internally and externally.....	9
Communications recording third party information	9
Forwarded communications and attachments	9
Emails and email chains	11
The public interest test.....	12
Arguments relevant to the exception.....	12
Safe space arguments.....	13
Chilling effect arguments	13
Record keeping arguments	14
Collective responsibility	15
Identification of officials.....	16
Legal advice.....	16
Commercial interests	17
Public interest in disclosure.....	18
Other considerations.....	19
More information	19

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 to public authorities how to apply the exception in regulation 12(4)(e) for internal communications.

Overview

- The concept of 'internal communications' is broad and covers a wide range of information. However, in practice the application of the exception will be limited by the public interest test.
- A 'communication' will include any information intended to be communicated to others or saved in a file where it may be consulted by others.
- An 'internal' communication is a communication within one public authority. All central government departments are deemed to be one public authority for these purposes.
- A communication sent by or to another public authority, a contractor or an external adviser will not generally constitute an internal communication.
- Public interest arguments should be focussed on protecting the public authority's private thinking space. Other arguments will not be relevant to this exception.
- There is no automatic or inherent public interest in withholding an internal communication. Arguments should relate to the particular circumstances of the case and the content and sensitivity of the specific information in question.

What the EIR say

5. Regulation 12(4)(e) states:

12.—(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(e) the request involves the disclosure of internal communications.

6. Regulation 12(8) states:

12.—(8) For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

7. As with all EIR exceptions, this is a qualified exception. Even if the exception is engaged, public authorities must go on to apply the public interest test set out in regulation 12(1)(b). A public authority can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information.
8. Regulation 12(2) specifically states that a public authority shall apply a presumption in favour of disclosure.

General principles of the exception

9. The EIR do not provide a definition of what constitutes an internal communication. Neither does [European Directive 2003/4/EC](#) on public access to environmental information, from which the EIR are derived.
10. The underlying rationale behind the exception is that public authorities should have the necessary space to think in private. The original European Commission proposal for the Directive ([COM\(2000\)0402](#)) explained the rationale as follows:

"It should also be acknowledged that public authorities should have the necessary space to think in private. To this end, public authorities will be entitled to refuse access if the request concerns [...] internal communications."

11. However, the exception is drafted broadly and covers all internal communications, not just those actually reflecting internal thinking. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. A wide range of internal documents will therefore be caught, although in practice the application of the exception will be limited by the public interest test.
12. The exception has no direct equivalent in the Freedom of Information Act 2000 (FOIA). However, many arguments about protecting a private thinking space will be similar to those made under section 35 (formulation of government policy) and section 36 (prejudice to effective conduct of government affairs) of FOIA.
13. The exception does not allow public authorities to neither confirm nor deny (NCND) whether they hold information. Under the EIR, a public authority can only refuse to confirm or deny whether it holds information if to do so would adversely affect the interests in regulation 12(5)(a) (international relations, defence, national security of public safety) and would not be in the public interest. The EIR differ in this respect from FOIA, where most exemptions include NCND provisions.

‘Communications’

14. The concept of a communication is broad and will encompass any information someone intends to communicate to others, or even places on file (including saving it on an electronic filing system) where others may consult it. It will therefore include not only letters, memos, and emails, but also notes of meetings or any other documents if these are circulated or filed so that they are available to others.
15. However, it will not include any information recorded simply to be used by its author, for example as an aide-memoire, unless this records the content of other communications (eg personal notes of an internal meeting or discussion).

16. Even if the communication is in draft form and the author has not sent it, it may still constitute a communication. However, the exception in regulation 12(4)(d) for material still in the course of completion is more appropriate and we would advise public authorities to consider that exception instead.
17. Any documents attached to a communication are also considered to have been communicated to others. Attachments will therefore constitute communications. However, a public authority should consider each attachment separately when deciding whether or not it is an 'internal' communication. See [Forwarded communications and attachments](#) for more information.

'Internal' communications

18. Essentially, an internal communication is a communication that stays within one public authority. Once a communication has been sent to someone outside the authority, it will generally no longer be internal.

Communications between central government departments

19. Communications between central government departments are expressly included as internal communications by virtue of regulation 12(8).

Example

In [Friends of the Earth v Information Commissioner and ECGD \(EA/2006/0073, 20 August 2007\)](#), the Information Tribunal considered communications between ECGD (a government department) and other central government departments. Friends of the Earth argued that regulation 12(8) was inconsistent with the European Directive, which did not explicitly protect communications between departments. However, the Tribunal found that the Directive defined central government as one public authority for these purposes, and that communications between departments should be protected as internal communications.

20. The rationale for this is that the availability of the exception should not depend on the exact structure and divisions of responsibility within central government, which can change over time. This also reflects the origin of the exception in the

European Directive. Some member states implementing the Directive will have simple government structures, and some will be more complex, like the UK. Member states with complex government structures should not be penalised by having to make their interdepartmental communications available, when a state with fewer larger departments would be able to protect similar communications.

21. However, communications between central government departments and devolved administrations are not internal communications:

Example

In ICO decision notice [FER0184525](#), the Commissioner considered emails between the Department for Trade and Industry and the Scottish Executive or the Welsh Assembly. He found that regulation 12(4)(e) was not engaged. The structure of central government departments was under the control of the Prime Minister through the appointment of his Cabinet, and could be reorganised as he saw fit. However, the devolved administrations were separate bodies pursuing their own objectives and policies, and should therefore be treated as separate bodies for the purposes of regulation 12(4)(e).

Executive agencies, NDPBs and wholly owned companies

22. Internal communications include communications between an executive agency and its parent department, as an executive agency is part of the parent department for the purposes of the EIR. Communications between executive agencies, or between an executive agency and another central government department, will therefore also be internal communications.
23. By contrast, NDPBs (non-departmental public bodies) are separate public authorities. They are created to carry out specific government functions at arm's length from ministers and are usually set up as separate legal entities, employing their own staff. They are independent of central government departments. This means communications between a government department and an NDPB are not internal communications.

Example

In [Defra v Information Commissioner & Portmann \(EA/2012/0105, 13 November 2012\)](#), the Information Rights Tribunal found that communications between Defra and the Marine Management Organisation (MMO) were not internal communications. The MMO had taken over responsibilities formerly carried out by an executive agency of Defra, and the subject matter could be considered internal. But the MMO had been purposely set up as an independent NDPB, and so the exception could not apply.

24. Wholly owned companies are separate legal entities and separate public authorities under the EIR, so communications between a public authority and its wholly owned company are not internal communications.

Communications between public authorities

25. Communications between other public authorities (eg between central government and a local authority, or between two local authorities) will not constitute internal communications.

Example

In ICO decision notice [FER0272686](#), the requested information related to a meeting between Lord Hunt (of Defra) and the Mayor of London. Defra refused the request, claiming that it would involve the disclosure of internal communications. The Commissioner found that, as the Mayor of London was not part of a central government department, communications between him and Defra did not constitute internal communications and regulation 12(4)(e) was not engaged.

Communications with a third party

26. Communications between a public authority and a third party (eg an external adviser, a contractor or a lobbyist) will not generally constitute internal communications.
27. There may be some exceptional cases where the particular circumstances of a case (the form and substance of the relationship between the parties and the nature of the information) might justify an argument that the communication should be seen as internal.

Example

In [DfT v Information Commissioner \(EA/2008/0052, 5 May 2009\)](#), the request was for the first draft of a transport study produced by Sir Rod Eddington, an unpaid independent expert who was asked to advise the government on transport and productivity. Although he was an unpaid external adviser with no contract, the Information Tribunal found that, in the particular circumstances of the case, the draft report was an internal communication. Sir Rod was “embedded” within the civil service, and was acting as the head of an internal working group of civil servants. The source of the study, funding and support were all provided internally, and the decision to publish was made by ministers.

The Tribunal concluded: *“In short, Sir Rod was invited into what is referred to as the ‘thinking space’ or ‘safe space’ within which government Ministers and their advisers operate when policy options are under discussion. In this way he had confidential access to Ministers’ and senior civil servants’ views... and was able to take them into account in reaching his own independent expert conclusions. It appears that the Study was, in effect, run and managed by the senior civil servants appointed as team leaders, but that the Study’s overall course and direction was set by Sir Rod who was responsible for its ultimate conclusions and recommendations”*. Regulation 12(4)(e) was therefore engaged.

28. However, this is likely to be rare and the default position is that communications with external advisers are not internal communications.

Example

In [South Gloucestershire Council v Information Commissioner and Bovis Homes Ltd \(EA/2009/0032, 20 October 2009\)](#), the request was for appraisal reports on potential development sites. External consultants had written the reports for the council. The Information Tribunal found that the reports were not internal communications, rejecting an argument that the consultants were “embedded” in the council in a similar way to Sir Rod Eddington in the DfT, and noting that the facts of the Eddington case were “exceptional”.

Communications sent both internally and externally

29. A communication sent (directly or by cc) to a third party, as well as being circulated internally, is not an internal communication. The public authority has communicated it internally, but this is true of most information held by a public authority, as almost everything is circulated to some extent or otherwise saved on file. The unique feature of an internal communication is that it is **only** circulated internally. If it is also sent outside the public authority, it is not purely internal and will not be covered.

Communications recording third party information

30. Communications can still be internal even if they record discussions with third parties or contain information received from third parties. For example, a note of a meeting with a third party, created and circulated within a public authority for its own use, is still an internal communication. It is the form of the communication that is important, rather than its content.

Example

In [*DBERR v Information Commissioner and Friends of the Earth \(EA/2007/0072, 29 April 2008\)*](#), the information included minutes of meetings with CBI lobbyists. The Information Tribunal found that the recording of a discussion between a government department and lobbyists was part of an internal communication. Regulation 12(4)(e) was therefore engaged.

Forwarded communications and attachments

31. If a public authority later forwards an internal communication to someone outside the authority, that communication will generally cease to be internal.
32. However, if there has been an unauthorised leak, it was forwarded in error, or the public authority was under a statutory obligation to forward it to a third party in confidence (eg to a regulator), it can still be covered as internal. In such cases the public authority did not choose to send the communication externally. It would therefore be inappropriate to consider that the communication had lost all protection, or for the EIR to be used to corroborate or publicise a leak (although note that the extent to which the information is

already in the public domain may affect the balance of the public interest test).

33. A communication originally from a third party (eg an email, letter or other document provided by a third party) does not automatically become an internal communication just because it is later circulated within the public authority.
34. However, if information from that communication is later reproduced in a separate internal email or memo, that separate internal email or memo is an internal communication, irrespective of the origin of the information.

Example

A request is made for a report prepared by external consultants and any internal analysis of that report. The report itself was received from a third party, and is not an internal communication. However, an internal memo summarising the contents of the report would be an internal communication.

35. If an external communication is forwarded or circulated as an attachment to an internal email or memo, that internal email or memo is an internal communication. Although the attachment in itself is not an internal communication, the fact that someone has circulated it within the authority, and details of who has seen it, will be covered. This means that the context and wording of a request can affect whether the exception is engaged. If the document only falls within the request because it was attached to an internal communication, the request “involves the disclosure of internal communications” and in these circumstances the exception will be engaged for both the internal communication and the attachment.

Example

A request is made for all documents circulated in advance of a particular meeting. An external report was circulated by internal email. Disclosure of the report in response to this particular request would disclose the fact that the report was circulated internally in a particular context. It is only relevant because it was attached to the internal email, and therefore the request involves the disclosure of internal communications. Regulation 12(4)(e) is engaged.

Emails and email chains

36. In practice, these issues often arise in relation to emails sent, copied (by cc or bcc), or forwarded to multiple recipients.
37. An internal email sent from one individual within a public authority to multiple recipients within that public authority will clearly constitute an internal communication.
38. An email that someone within a public authority has sent or copied (by cc or bcc) to a third party will not constitute an internal communication, even if they have also sent or copied it within the public authority. Similarly, an internal email will cease to be an internal communication once someone within the public authority has forwarded it to a third party. As long as someone within the authority has communicated it to someone outside the authority, it is no longer a purely internal communication, and the exception will not be engaged.
39. If someone within the public authority has sent an email to a third party but has also blind-copied (bcc) it to internal recipients, the third party does not know that the sender also sent it to those internal recipients. Both the fact that it was copied internally and the names of those in the bcc field can therefore still be considered an internal communication (as this information is only contained within the emails of the internal sender and bcc recipients). However, the main content of the communication would not be considered internal, as the sender has circulated it outside the authority.
40. An email received from a third party will not become an internal communication just because someone later forwards it within the authority. However, the internal email forwarding it on will be an internal communication.
41. This means that an email chain may need to be divided into internal and external sections for the purposes of applying this exception. However, it is not necessary to consider every email separately. If an internal email chain is at any point forwarded or copied to a third party, the whole chain up to that point has been sent outside the public authority and therefore ceases to be an internal communication. In practice, it therefore makes sense to look at the latest emails first, working back to the earlier emails. If the latest emails are internal emails, these will constitute internal communications. However, at the point any one email has been sent or copied externally, the whole email chain up to that point ceases to be internal.

The public interest test

Arguments relevant to the exception

42. Although a wide range of internal information will be caught by the exception, public interest arguments should be focussed on the protection of internal deliberation and decision making processes.
43. This reflects the underlying rationale for the exception: that it protects a public authority's need for a 'private thinking space'. As set out above, this rationale was made clear in the [proposal for the European Directive](#) which the EIR are intended to implement.
44. This approach is also supported by the duty set out in Article 4 paragraph 2 of the Directive to interpret exceptions in a restrictive way. If the public interest arguments were unrestricted, the broad scope of the exception would turn it into a 'catch-all' exception, which would seem contrary to this duty.
45. Although the public interest factors for this exception should focus on protecting internal deliberation and decision making processes, some types of internal communication (eg legal advice or commercially sensitive information) may be afforded more protection under other exceptions, where other effects of disclosure can be taken into consideration. If more than one EIR exception applies to the information it is possible to aggregate (ie combine) the public interest factors relevant to all applicable exceptions when considering the public interest test.
46. These factors must then be balanced against the public interest in disclosure. Regulation 12(2) specifically provides that public authorities should apply a presumption in favour of disclosure. This means that a public authority will have to disclose some internal communications, even though disclosure will have some negative effect on internal deliberation and decision making processes.
47. There is no automatic public interest in withholding information just because it falls within this class-based exception. Neither should there be a blanket policy of non-disclosure for a particular type of internal document. Arguments should always relate to the content and sensitivity of the particular information in question and the circumstances of the request.

48. Arguments about protecting internal deliberation and decision making processes will often relate to preserving a 'safe space' to debate issues away from external scrutiny, and preventing a 'chilling effect' on free and frank views in future. The weight of these factors will vary from case to case, depending on the timing of the request and the content and context of the particular information in question.

Safe space arguments

49. The Commissioner accepts that a public authority needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. This may carry significant weight in some cases.
50. The need for a safe space will be strongest when the issue is still live. Once a public authority has made a decision, a safe space for deliberation will no longer be required and the argument will carry little weight. The timing of the request will therefore be an important factor. This was confirmed by the Information Tribunal in [*DBERR v Information Commissioner and Friends of the Earth \(EA/2007/0072, 29 April 2008\)*](#): "*This public interest is strongest at the early stages of policy formulation and development. The weight of this interest will diminish over time as policy becomes more certain and a decision as to policy is made public.*"
51. Public authorities may also need a safe space for a short time after a decision is made in order to properly promote, explain and defend its key points. Public authorities would need to explain exactly why this safe space is still required at the time of the request on the facts of each case. However, this sort of safe space will only last for a short time, and once an initial announcement has been made there is also likely to be increasing public interest in scrutinising and debating the details of the decision.

Chilling effect arguments

52. Public authorities often argue that disclosure of internal discussions would inhibit free and frank discussions in the future, and that the loss of frankness and candour would damage the quality of advice and lead to poorer decision making. This is known as the chilling effect.

53. On the other hand, civil servants and other public officials charged with giving advice are expected to be impartial and robust in meeting their responsibilities, and not easily deterred from expressing their views by the possibility of future disclosure. It is also possible that the threat of future disclosure could actually lead to better quality advice. Nonetheless, the possibility of a chilling effect cannot be dismissed out of hand.
54. Chilling effect arguments operate at various levels. If the issue in question is still live, arguments about a chilling effect on those ongoing internal discussions are likely to carry significant weight. Arguments about a chilling effect on closely related live discussions may also carry weight. However, once the relevant discussions have finished, the arguments become more and more speculative as time passes. It will be harder to make convincing arguments about a generalised chilling effect on all future discussions. For example, see [DfES v Information Commissioner and the Evening Standard \(EA/2006/0006, 19 February 2007\)](#), and [Scotland Office v Information Commissioner \(EA/2007/0128, 5 August 2008\)](#) at para 71.
55. The Commissioner does not consider that chilling effect arguments will automatically carry much weight in principle. The weight accorded to such arguments will instead depend on the circumstances of each case, including the timing of the request, whether the issue is still live, and the content and sensitivity of the information in question.

Record keeping arguments

56. Arguments that disclosure will lead to public authorities keeping less detailed or inadequate records of discussions in future, and that this will harm internal deliberation in future, will carry little if any weight. Public authorities will need to keep adequate records for their own purposes and a failure to keep adequate records could and should be addressed by effective management. If the department endorses or permits a loss of detail in its records, it will be difficult to argue that the loss of detail is harmful.
57. This follows the approach of the Information Tribunal in [Guardian Newspapers Ltd and Heather Brooke v Information Commissioner and BBC \(EA/2006/0011 & 0013, 8 January 2007\)](#) and [DfES v Information Commissioner and the Evening Standard \(EA/2006/0006, 19 February 2007\)](#).

58. However, some record keeping arguments may actually be chilling effect arguments made in a slightly different way (ie that disclosure would result in less detailed advice, which would then inevitably result in less detailed records of that advice). These chilling effect arguments may carry some weight, as discussed above.

Collective responsibility

59. If the information reveals the views of an individual minister on an issue of government policy, arguments about maintaining collective responsibility are likely to carry significant weight.
60. Collective responsibility is the long standing convention that all ministers are bound by decisions of the Cabinet and carry joint responsibility for all government policy and debates. It is a central feature of our constitutional system of government. Ministers may express their own views freely and frankly in Cabinet and committees and in private, but once a decision is made they are all bound to uphold and promote that agreed position to Parliament and the public. This principle is set out at paragraph 2.1 of the [Ministerial Code](#) (May 2010):

"The principle of collective responsibility, save where it is explicitly set aside, requires that ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in Cabinet and ministerial committees, including in correspondence, should be maintained."

61. The convention of collective responsibility incorporates elements of safe space and chilling effect already considered above. However, there is an additional unique element that will carry additional weight: that ministers need to present a united front in defending and promoting agreed positions. If disclosure would undermine this united front by revealing details of diverging views, this would undermine ongoing government unity and effectiveness.
62. If collective responsibility arguments are relevant, they will always carry significant weight in the public interest test because of the fundamental importance of the general constitutional principle.

63. This weight may be reduced to some extent if the individuals concerned are no longer politically active, if published memoirs or other public statements have already undermined confidentiality on the particular issue in question, or if there has been a significant passage of time. However, this does not mean that the publication of memoirs will always undermine the confidentiality of the full official record. It will always depend on all the circumstances of each individual case.
64. Whether or not the issue is still 'live' will not reduce the public interest in maintaining collective responsibility (although it will affect the weight of related safe space arguments). This is because the need to defend an agreed position will, by its very nature, continue to be relevant after a decision has been taken, and because of the constitutional importance of maintaining the general principle of collective responsibility for the sake of government unity.

Identification of officials

65. Some arguments may relate to the protection of civil servants (in central government) or junior employees or officials (in other public authorities). Such arguments must focus on the harm this would cause to internal deliberation and decision making processes – for example, that it would affect their perceived neutrality and undermine their future working relationships, or contribute to a chilling effect, or weaken the accountability of politicians and more senior officials. However, these arguments will not generally carry much weight, as officials should not be easily deterred from doing their job.
66. The actual effect on the individual concerned is not relevant to this exception. However, arguments about unfairness to an individual can and should be made under the personal data exception in regulation 13 instead.

Legal advice

67. Internal communications may include legal advice from in-house lawyers, which will attract legal professional privilege. However, public interest arguments under this exception must be focussed on harm to internal deliberation and decision-making processes. Broader arguments about the principle of legal professional privilege will not carry any inherent weight under this exception. The course of justice exception in regulation 12(5)(b) is likely to be more appropriate for legal

advice, and we would advise public authorities to use that exception instead.

68. If a public authority does use this exception, there will be some public interest in preserving a safe space to seek and consider legal advice without external interference. As with other safe space arguments, this is only likely to carry weight while the issue is still live.
69. Chilling effect arguments may also carry some weight. It may be important to maintain the confidentiality of legal advice in order to ensure that the public authority is not discouraged from obtaining proper legal advice in appropriate cases. There is likely to be a greater expectation that legal advice will be kept confidential compared to other types of advice or discussions, and the resulting chilling effect if legal advice was disclosed may therefore be more pronounced. Although lawyers are subject to professional regulation and should be expected to continue giving full and proper advice, the quality of internal discussions may deteriorate if a public authority was deterred from even seeking the advice for fear it would later be disclosed.
70. However, wider arguments about the principle of legal professional privilege and its fundamental importance to the legal system as a whole are not related to the quality of internal decision making processes and are not therefore relevant under this exception. Public authorities should instead make these arguments under the course of justice exception in regulation 12(5)(b), where they will carry strong inherent weight.

Commercial interests

71. There is a public interest in protecting effective commercial discussions and decisions within the public authority, in the same way that there is a public interest in protecting policy discussions and decisions. However, arguments about the impact of disclosure on the commercial interests of the public authority will not be relevant to this exception, unless they are specifically linked back to an effect on internal deliberation and decision making processes.

Example

An internal communication reveals the budget available for a particular contract. The public authority considers that

disclosure would harm its ability to get best value, as bidders will price their bids accordingly. Although this may not be in the public interest, it would not be a relevant factor for the purposes of this exception as it has not been tied back to an effect on internal deliberation.

For the argument to carry any weight under this exception, the public authority needs to establish how the harm to its commercial interests would in turn affect internal discussion. For example, there may be an argument that the fear of undermining the bid process would create a chilling effect on ongoing discussions about funds available for other projects, which would lead to less informed decisions on those budgets and bids.

72. Public authorities should instead make any arguments that internal information should remain confidential for purely commercial or economic reasons under the commercial confidentiality exception in regulation 12(5)(e).

Public interest in disclosure

73. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in environmental decision making, all of which ultimately contribute to a better environment.
74. The weight of this interest will vary from case to case, depending on the profile and importance of the issue and the extent to which the content of the information will actually inform public debate. However, even if the information would not in fact add much to public understanding, disclosing the full picture will always carry some weight as it will remove any suspicion of 'spin'.
75. There may of course be other factors in favour of disclosure, depending on the particular circumstances of the case. For example, these could include transparency in relation to the influence of lobbyists, accountability for spending public money, the number of people affected by a proposal, any reasonable suspicion of wrongdoing, or any potential conflict of interest.

76. There may also be an argument that disclosure would encourage better advice and more robust, well considered decision making in future.

Other considerations

77. Public authorities might also want to consider the following exceptions:

- regulation 12(4)(d) if the information is in draft form or is otherwise unfinished or incomplete;
- regulation 12(5)(b) if the information includes legal advice from in-house lawyers;
- regulation 12(5)(d) if disclosure would adversely affect the confidentiality of formal proceedings of a public authority;
- regulation 12(5)(e) if the information is commercial and confidential and disclosure would harm the legitimate economic interests of the public authority.

78. 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 exemptions under FOIA. The most relevant FOIA exemptions for internal communications are likely to be section 35 (formulation and development of government policy) or section 36 (prejudice to effective conduct of government affairs). For internal legal advice, consider section 42 (legal professional privilege).

79. Additional guidance is available on [our guidance pages](#) if you need further information on the public interest test, other EIR exceptions or FOIA exemptions.

More information

80. 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.

81. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
82. 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).