

# Interests of the person who provided the information to the public authority (regulation 12(5)(f))

## Environmental Information Regulations

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## 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(5)(f) to protect the interests of the person who voluntarily provided the requested information, where that person was under no legal obligation to supply it, the public authority is not entitled to disclose it (apart from under the EIR) and the person has not consented to disclosure.

## Overview

- To refuse environmental information under the exception in regulation 12(5)(f), public authorities will need to establish that:
  - the information is not on emissions;
  - the interests of the person providing the information to the public authority will be adversely affected by disclosure;
  - the person providing information was not under any legal duty to provide it;
  - the public authority is not entitled to disclose the information provided;
  - the person providing the information has not consented to disclosure; and
  - the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Generally where the disclosure of information would harm the interests of the person that provided it and the other requirements within the exception are met, a public authority will owe that person a duty of confidence. The public interest test will then determine whether or not the information should be disclosed.

## What the EIR say

### 5. Regulation 12(5)(f) states:

**12.—** (5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

(f) the interests of the person who provided the information where that person—

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure

6. As with all EIR exceptions, regulation 12(5)(f) is qualified. Therefore, even if the exception is engaged, the authority must go on to apply the public interest test set out in regulation 12(1)(b). It can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information.
7. Regulation 12(2) specifically states that a public authority shall apply a presumption in favour of disclosure.
8. Regulation 12(9) provides that the exception is not available for information on emissions.

9. Regulation 12(10) provides that for this exception (as well as regulation 12(5)(b) and (d)) the term 'public authority' includes Scottish public authorities.
10. It is important to note that the exception refers to "the interests of the **person** who provided the information...". The word "person" is not restricted to an individual and also includes legal persons such as companies.

## General principles of the exception

11. The [Aarhus Implementation Guide](#) suggests that the purpose of the exception is to encourage the voluntary flow of environmental information from third parties to public authorities. The starting point must always be to consider whether disclosure would adversely affect the interests of the third party who provided the information to the public authority. This is because the exception can only apply where disclosure would result in an adverse effect on that person's interests.
12. Environmental information will be voluntarily provided by a third party to a public authority in a variety of circumstances and could be provided by individuals, charities and private companies.
13. Examples include:
  - Information gathered in consultations and surveys where there was no obligation on people to respond to them.
  - Information supplied by whistleblowers.
  - Information supplied voluntarily by environmental groups or lobby groups or individuals interested in the environment.
  - Information provided by companies in pre-planning discussions with planning authorities.
  - Privately-owned papers deposited in an archive.
14. It is possible for an employee of a public authority to provide information to his employer on a voluntary basis. This will usually arise where a staff member volunteers information outside the terms and conditions of their employment and is

therefore 'provided' to the employer authority. For example, if someone voluntarily provided information on a disciplinary matter not relating to their area of work, this is likely to comprise the subjective and personal opinion of the employee which was not made in the usual course of employment, and so would qualify as information provided to the authority.

15. Where information is caught within the scope of the exception, refusal to disclose is only permitted to the extent of the adverse effect. The Information Tribunal illustrated how this applies in practice in the case of [\*Archer v the Information Commissioner and Salisbury District Council \(EA/2006/0037, 9 May 2007\)\*](#) concerning a request for the whole of a report. It found that the adverse effect only arose in respect of part of the report and that the cited refusal could not therefore be applied to the whole document.
16. The reference in regulation 12(5)(f) to provision and supply of information means that, for example, jointly negotiated wording in a contract is not within the scope of the exception, as this is not provided or supplied to the public authority by a third party.
17. Although the exception has no direct equivalent in the Freedom of Information Act 2000 (FOIA), the requirement for an adverse effect on the person who provided the information shows that there are similarities with the duty of confidence under section 41 of FOIA. The exception may also apply to information received from external sources, such as lobbyists, which under FOIA would be protected under the formulation and development of government policy exemption ([section 35](#)), or the effective conduct of public affairs exemption ([section 36](#)).
18. The purpose of the exception, as indicated by the Aarhus Implementation Guide, suggests that there are also similarities with one aspect of the exemption at section 31 of FOIA – where the effect of disclosure has a detrimental effect on the future voluntary supply of information to some public authorities (in particular those with regulatory responsibilities) which, in turn, prejudices the exercise of their functions (section 31(1)(g)). However, the key difference is that for regulation 12(5)(f) to apply there must be an adverse effect to a third party (ie the person who provided the information).

19. The exception does not allow public authorities to neither confirm nor deny (NCND) whether they hold relevant 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 referred to in regulation 12(5)(a) (international relations, defence, national security or public safety) and would not be in the public interest. The EIR differ in this respect from FOIA, where most exemptions include NCND provisions.
20. The exception can be broken down into a five-stage test, as recognised by the Information Rights Tribunal in [\*John Kuschnir v Information Commissioner and Shropshire Council\* \(EA/2011/0273; 25 April 2012\)](#):
- Would disclosure adversely affect the interests of the person who provided the information to the public authority?
  - Was the person under, or could they have been put under, any legal obligation to supply the information to the public authority?
  - Did the person supply the information in circumstances where the recipient public authority, or any other public authority, was entitled to disclose it apart from under the EIR?
  - Has the person supplying the information consented to its disclosure?
  - Does the public interest in maintaining the exception outweigh that in disclosure?
21. Where the first four stages of the test are satisfied a public authority will owe the person that supplied the information a duty of confidence. The public interest test will then determine whether or not the information should be disclosed.

### Adverse effect on the interests of the person who voluntarily provided the information

22. As with all the exceptions in regulation 12(5), the threshold necessary to justify non-disclosure, because of adverse effect, is a high one. The effect must be on the interests of the person who voluntarily provided the information and it must be adverse.
23. In considering whether there would be an adverse effect in the context of this exception, a public authority needs to identify

harm to the third party's interests which is real, actual and of substance (i.e. more than trivial), and to explain why disclosure **would**, on the balance of probabilities, directly cause the harm.

24. As the Tribunal in the Kuschnir case noted, there is no requirement for the adverse effect to be significant – the extent of the adverse effect would be reflected in the strength of arguments when considering the public interest test. However, the public authority must be able to explain the causal link between disclosure and the adverse effect, as well as why it would occur.
25. The need to point to specific harm and to explain why it is more probable than not that it would occur reflects the fact that this is a higher test than 'might adversely affect', which is why it requires a greater degree of certainty. It also means that it is not sufficient for a public authority to speculate on possible harm to a third party's interests.

#### **Example**

An example of how disclosure would adversely affect the interests of the person(s) who voluntarily provided the information occurs in [ICO Decision Notice FER0450536](#).

The case concerned a request to Forestry Commission England for information on the implications for archaeological sites in the New Forest National Park as a result of actual or planned projects of mire or stream restoration.

The voluntarily supplied information comprised correspondence from an individual acting in a private capacity. This included comments that were made on the assumption that they would remain confidential, which had allowed the private individual's concerns to be shared with the public authority in a free and frank fashion. It was therefore decided that disclosure would adversely affect the interests of the individual because there would be detriment to his relationships with other parties about whom he had supplied information.

## **Consultation with the person that supplied the information**

26. Public authorities should be able to evidence the harm that would arise as a result of disclosure. In many cases this will stem from direct consultation with the person who supplied the information. This is most likely to have been at the time the information was provided. However, as explained in more detail below, there may be instances in which it is necessary to consult the information provider at the time of the request.
27. In situations where a person states that disclosure would harm their interests, but does not articulate the nature of this harm, a public authority will need to enter into discussions with the provider in order to establish whether there is any substance to the concerns expressed. This will allow the authority to decide whether disclosure, at the time of the request, would lead to an adverse effect or not and so whether further consideration of the exception is necessary. It is important to acknowledge the importance that the person providing the information attaches to it and the harm that would be suffered if it was disclosed.

### **Example**

The importance of a public authority being able to supply evidence of the adverse effect on a person who has provided it voluntarily with information in order to be able to engage the exception was shown in [ICO Decision Notice FER0395418](#).

The case concerned a request for environmental reports supplied on a voluntary basis by various organisations to a regional development agency, Advantage West Midlands (AWM). AWM was unable to demonstrate to the Commissioner that any interests of the organisations that had provided the reports would be adversely affected if the information were disclosed. Consequently, the Commissioner determined that regulation 12(5)(f) was not engaged.

28. Whilst consultation with the person who provided the information is encouraged in the majority of cases, the Commissioner recognises that there will be instances where, due to its knowledge of the particular circumstances of a case and its overall experience of the context in which the

information was provided, the public authority will be able to explain the harm to the provider without such consultation.

29. As previously mentioned, a public authority should consider whether any harm to the third party would arise, based on the circumstances at the time of the request. Therefore, where the request is made a significant amount of time after the information was provided and/or the circumstances have changed, it may be necessary (if practically possible) to contact the supplier to seek their views on whether any harm is still likely to arise and if so why. However, the Commissioner does acknowledge that there will be cases where it is clear that detriment still exists without any need to revert to the provider. In all cases, the onus will be on the public authority to demonstrate how disclosure of the requested information would lead to the adverse effect based on the circumstances at the time of the request.

### **Relationship with other exceptions**

30. In considering the potential adverse effect of disclosure on the interests of the information provider, it may be that another exception is more appropriate. For example, disclosure may be harmful to the commercial interests of the information provider, in which case the exception at regulation 12(5)(e) is likely to be more appropriate. However, if the requirements of regulation 12(5)(e) are not met, it is possible that an adverse effect on the provider's commercial interests could fall into regulation 12(5)(f).
31. Risks to the personal safety of someone who has voluntarily provided information may arise as a result of disclosure. In such cases it may be that the exceptions at regulation 12(5)(a), which includes reference to public safety, or regulation 13, which covers personal information, are relevant. A public authority should consider where the main focus of the adverse effect lies; for example, if that focus is the personal safety of the provider then it may well be appropriate to give primary consideration to regulation 12(5)(a).
32. If a public authority can show that disclosure would adversely affect the interests of the information provider, it is then required to show how all three tests set out in subsections (i)-(iii) are satisfied. If any one of these tests is not met, the

public authority cannot withhold the information on the basis of this exception.

33. Where all of the requirements are met, the public authority will have a duty of confidence to the supplier. The Commissioner accepts that where a duty of confidence is established, disclosure would not only harm the provider but also the wider principle of confidentiality. In the context of this exception it is the duty of confidence that supports the free flow of information to public authorities. In the Commissioner's view the greater the harm to the supplier the more significant the damage to the wider principle of confidentiality. This level of harm will be relevant when determining the weight that should be attributed to the arguments in favour of maintaining the exception in the public interest test.

### Legal obligation to supply the information (regulation 12(5)(f)(i))

34. The exception is not engaged if there was any legal obligation on the information provider to supply the information to the public authority receiving the request, or any other public authority. Equally, the exception is not engaged if the information provider could have been put under such a legal obligation. Therefore, even if information was not, as a matter of fact, provided under a legal obligation in any particular case, what a public authority must consider is whether the information provider could have been put under such a legal obligation. This is a subtle distinction.

#### **Example**

The third party in the Kuschnir case was not under a legal obligation to supply the relevant information (in this case a schedule of works). However, the Tribunal determined that the public authority could have compelled the third party to supply the information by virtue of powers under the Environmental Protection Act 1990. Consequently the exception was not engaged.

35. This also shows how this exception differs to the position under FOIA in relation to the effect on the voluntary supply of information. Under FOIA, even if a public authority could have compelled the third party to supply the information, an

exemption could still be engaged – for example section 31 (law enforcement) or section 33 (audit functions) – with weight attached to the argument that the maintenance of voluntary co-operation was preferable to the use of powers to compel the supply of information.

36. Persons who apply to public authorities for the purposes of obtaining licences, grants and other permissions will submit information as part of the process, which may be environmental in nature. However, despite the fact that the decision to make the application is a voluntary one, once that decision is made there will be certain information that the applicant is legally obliged to provide in order for the application to be processed. Consequently, the test at regulation 12(5)(f)(i) is not met and the exception cannot be applied to such information.
37. In many cases it will be clear that the third party could not have been put under a legal obligation to supply the information.

#### **Example**

[ICO Decision Notice FS50390500](#) concerned a request for information to a local authority relating to plans for the development of an area of land. As is usual in cases involving development sites, developers enter into discussions with the planning authority regarding their proposals prior to any formal planning application.

The Commissioner determined that the information requested was provided to the public authority by third parties, ie those companies seeking to develop the land in question. He also decided that, as the developers were under no obligation to enter into negotiations with the public authority, it was clear that the nature of the information and the circumstances in which it was provided mean that it was supplied voluntarily. The Commissioner was also of the view that there were no means available to the public authority by which the developers could be put under a legal obligation to supply the information.

38. The wording of regulation 12(5)(f)(i) refers to “any legal obligation to supply it to that **or any other** public authority”. The Commissioner considers that, when determining whether

the person could have been compelled to provide the information, public authorities must consider their own powers and those of any other obviously relevant public authority. Whether another public authority is relevant will depend upon the context and circumstances in which the information was originally obtained and of the request. For example, there may be situations where two, or more, public authorities are working in partnership, where one public authority holds information that has been supplied by a third party on a voluntary basis, but another public authority has powers to compel the provision of the information. Where the first authority receives a request for the information, it must take account of the fact that another authority has the necessary powers to legally oblige the third party to supply the information. The intention behind this phraseology would seem clear; that it would be inappropriate to be able to claim the exception if, in fact, another public authority has the power to compel provision of the information.

### **Information shared with other public authorities**

39. The reference to any other public authority also means that where information received by one public authority is subsequently passed on (for example, by virtue of a statutory obligation) to another, the receiving authority is likely to be able to rely upon regulation 12(5)(f), provided that it does not have any powers which would have allowed it to compel the original source of the information to supply it. This is to ensure that the free flow of information from the original provider is protected.
40. Where one public authority has passed information on to another, and the receiving public authority is considering regulation 12(5)(f), it is important that they are clear about whose interests they are concerned about. Regulation 12(5)(f) is most likely to apply in relation to the original supplier, but it could also be engaged if the interests of the public authority that passed the information on would be harmed as a result of disclosure and it supplied the material voluntarily. In practice the Commissioner considers that such occasions are likely to be rare as most information would only be forwarded as a result of a legal obligation to share it. In view of this, the focus will usually be on the harm to the original information provider.

## Circumstances in which the public authority is entitled to disclose the information provided (regulation 12(5)(f)(ii))

41. Under this limb of the five-stage test it is necessary to consider whether the information was supplied to the public authority in circumstances such that it, or any other public authority, is entitled to disclose it. In practice this means considering whether or not the public authority has a duty of confidence and whether any explicit power permits the public authority to disclose the information in the circumstances. Where the public authority in receipt of the information, or indeed any other public authority, is entitled to disclose the information, the exception will not apply.
42. The Commissioner does not consider that public authorities generally need a specific power to disclose information that they hold. However, where information has been provided by another person, public authorities will only be able to disclose it if there is no duty of confidence or they have a specific power to do so.
43. It is unlikely that a reasonable expectation of confidence will be demonstrable if it is clear that the person who provided the information was aware that the public authority has the power to disclose it and is likely to do so. Even if a public authority is able to demonstrate that a supplier had a reasonable expectation of confidence, the exception will not apply if it has an explicit power to release the information.
44. Where a public authority establishes that it owes the supplier a duty of confidence and there is no specific power to disclose, it does not need to consider whether there would be a public interest defence to any breach of confidence under this limb of the exception. This is different to the section 41 exemption under FOIA because there is no need to establish an actionable breach.
45. On a practical level, as the EIR exception is subject to the public interest test, the balance of the public interest will still be fully considered before any decision on disclosure can be reached. Any prior consideration of a public interest defence could not ultimately change the outcome of the case, and would therefore cause unnecessary duplication. This supports the view that there is no need to consider the public interest

defence as part of the engagement of this limb of the exception.

46. Where a public authority is subject to a statutory provision which prevents it from disclosing information that has been supplied to it voluntarily, this is also likely to satisfy this part of the exception. In other words, the information will probably not have been provided in circumstances where the public authority is entitled to disclose it if a statutory prohibition exists.
47. Regulation 5(6) of the EIR dis-applies statutory prohibitions on disclosure. However, it is not relevant in relation to regulation 12(5)(f). The phrase 'apart from these Regulations' in the exception means that regulation 5(6) should be disregarded. In effect, public authorities must consider whether, outside of the EIR, they would be entitled to disclose. Where a statutory prohibition exists this is likely to be of relevance when determining whether the public authority is under a duty of confidence, as it is likely to influence the reasonable expectations of the information provider about what will be done with the information they supply.

### Consent of the person who provided the information (regulation 12(5)(f)(iii))

48. Public authorities must consider whether, at the time a request is made, the person who supplied the information has not consented to its disclosure. This will often be determined at the time the information was supplied. It is a matter of good practice that a public authority should advise the supplier at the time the information is supplied to what uses the information will be put, including any likely disclosures. This should help to establish whether the supplier consents to disclosure and also provide the authority with the opportunity to encourage the supplier to provide such consent.
49. Moreover, as circumstances can alter, it is equally a matter of good practice, where possible, to revert to the supplier following receipt of a request in order to confirm whether or not there is consent to disclose. This links closely to what we have said above concerning how the public authority establishes that there would be detriment to the information provider as a result of disclosure. If a public authority has to consult with the

provider about detriment, it should also take this opportunity to establish whether it has the necessary consent to disclose the information. This will be especially relevant where circumstances have changed since the information was first supplied to the authority.

50. Where there is no duty of confidence and no specific objection to disclosure the Commissioner considers that a public authority could disclose the information even in the absence of specific consent from the information provider. In any event, if there is no duty of confidence it is likely that other aspects of the exception will not be satisfied in order to engage it.

## Public interest test

51. Where it is established that disclosure would adversely affect the interests of the person who provided the information to the public authority, and where the three tests in subsections (i)-(iii) are met, a public authority must then go on to carry out a public interest test.
52. In accordance with regulation 12(1)(b), in order to withhold the information from disclosure, a public authority must demonstrate that the public interest in maintaining the exception outweighs the public interest in disclosing the information. Such a public interest test must be carried out against the requirement set out in regulation 12(2) that a public authority shall apply a presumption in favour of disclosure. This means that on occasion a public authority should disclose information even though this would adversely affect the interests of the information provider.
53. Note that if more than one EIR exception applies to the information, it is possible to aggregate (combine) the public interest factors relevant to each exception when considering the public interest test.
54. A public authority must do more than simply assert that the prevention of adverse effects to the interests of third party information providers is in the public interest. It must demonstrate how, in a particular case, such prevention serves the public interest. For example, a particular disclosure may harm the relationship between the third party and the public authority and may undermine the ability of the authority to do

business with that person, and/or with other parties, in the future.

### **Public interest in maintaining the exception**

55. In considering the public interest in maintaining the exception, regard should be had to the extent of the harm to the interests of the person who provided the information to the public authority on a voluntary basis that would result from disclosure. Avoiding that harm will be a factor in favour of maintaining the exception. Whilst there will always be some public interest in preserving trust in a public authority's ability to keep third party information 'confidential', it is the extent and nature of the harm to the individual that will influence the degree to which the principle of confidentiality is damaged and, therefore, the amount of weight attributed to this public interest argument.
56. For example, if the harm caused by disclosure is only minimal, there is likely to be little public interest in maintaining the exception, especially given the presumption in favour of disclosure.
57. In considering the public interest, regard should also be had to the purpose of the exception as indicated by the [Aarhus Implementation Guide](#) (referred to above), which is to encourage the voluntary flow of information from private persons to public authorities.
58. The starting point is that there is an inherent public interest in the prevention of adverse effects on the interests of the third party provider of information, and the principle of confidentiality. It is also legitimate to consider the public interest in maintaining the voluntary supply of information to public authorities, which would be threatened as a result of the adverse effect to the interests of the third party. This is not to say that this is a direct equivalent of section 31(1)(g) of FOIA, which specifically refers to prejudice to the functions of a public authority. The focus of the exception in regulation 12(5)(f) is the adverse effect on the third party's interests and the consequent effect on the voluntary supply of information, but in considering the public interest it is legitimate to take into account any harmful effect on a public authority's functions where that results from a reduction in the flow of voluntarily supplied information. There is likely to be such a direct link

because, in most cases, the very reason for a third party providing information is that it relates to the functions of the public authority.

### **Example**

In [\*Mr & Mrs D Wallis v Information Commissioner and Derbyshire County Council \(EA/2011/0219; 31 January 2012\)\*](#), the First-tier Tribunal confirmed the link between the disclosure of information which had been supplied voluntarily and the undermining of its future provision. The Council required all the available evidence in order to perform its statutory duties effectively (specifically, duties under the Highways Act in that case), and as such needed to be able to rely on the voluntary supply of information from third parties. Future supply of information would be undermined because the Council would not be able to maintain the necessary confidentiality that the suppliers of the information would expect. By implication, the public interest test also required consideration of the impact on the Council's ability to undertake its statutory highway functions.

The information requested included information held by the Council on any investigations or complaints regarding works the applicants proposed to carry out on their property. The proposed works raised issues about highway rights over the land.

59. In cases such as this, although the starting point in considering the public interest is that disclosure would cause detriment to the provider of the information due to a breach of confidentiality, the crucial factor in strengthening the public interest in maintaining the exception is that disclosure would stem the flow of information supplied to the detriment of the public authority in carrying out a statutory function.
60. Another category of information that is likely to be supplied on a voluntary basis by third parties is statistical data and the results of sample surveys relating to environmental conservation. If the suppliers of such information are concerned about disclosure of the information, such that they are unwilling to provide it in the future, this could have a detrimental effect on the ability of certain public authorities to carry out their regulatory role, which would not be in the public interest. The extent to which the public authority depends on information that is volunteered in order to fulfil a particular

function will be relevant to determining the weight that attaches to this argument. The more critical the information is the greater weight this argument is likely to have.

61. This public interest argument could also apply to information supplied to public authorities voluntarily by lobbyists. However, given that the aim of such groups is to further their own agenda it is unlikely that they would be easily deterred from supplying information. Therefore it is unlikely that a great deal of weight would be attached to this argument.

### **Public interest in disclosure**

62. 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.
63. 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.
64. Regulation 12(5)(f) may arise in relation to planning matters, for example where an applicant requests information on pre-planning application discussions between a local authority and a developer. The Commissioner considers that there is a high level of public interest in public participation in planning matters. However, this would have to be balanced against the ability of a local authority to carry out the planning process, something which could be undermined if developers and others become reluctant to engage with local authorities as a result of disclosure.
65. There will also be a strong public interest in disclosing information supplied by scientific and other experts which may contribute to scientific developments. Similarly, scientific information voluntarily provided by experts concerning public health and/or safety may also lead to developments in disease prevention. Such disclosures could also have the wider benefit of increasing public confidence in official scientific advice.

66. There is also public interest in disclosing information provided by lobbyists to show the influence which lobbyists have on public authorities, so that the relationships with such organisations can be understood and to allow others to present counterbalancing views.
67. There may of course be other factors in favour of disclosure, depending on the particular circumstances of the case. These could include accountability for spending public money, the number of people affected by a proposal, any reasonable suspicion of wrongdoing or any potential conflict of interest.

## Other considerations

68. Public authorities might also want to consider the following exceptions:
  - regulation 12(5)(a) if disclosure would adversely affect international relations, defence, national security or public safety;
  - regulation 12(5)(d) if disclosure would adversely affect the confidentiality of formal proceedings of a public authority; or
  - regulation 12(5)(e) if disclosure would adversely affect the confidentiality of commercial or industrial information.
69. 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 are likely to be section 31(1)(g) (prejudice to the exercise of a public authority's functions for specified purposes), section 41 (information obtained in confidence) or section 43 (commercial interests).
70. 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

71. 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.
72. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
73. 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](#).