



## Freedom of Information Act Environmental Information Regulations

### Good practice in providing advice and assistance

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

This guidance explains to public authorities what we consider to be good practice in relation to the duty to provide advice and assistance under section 16 of the FOIA and regulation 9 of the EIR.

#### Overview

- Public authorities are under a duty to provide advice and assistance to individuals making requests for information under both the FOIA and the EIR.
- A public authority which complies with the [Section 45 of the FOIA](#) or [Regulation 16 of the EIR](#) Codes of Practice will be considered to have complied with its duty to provide advice and assistance.
- Public authorities should go beyond the requirements of the Codes when providing advice and assistance.
- The good practice steps outlined in this guidance apply to both section 16 and regulation 9.

#### What do section 16 and regulation 9 say?

Section 16 sets out the duty on public authorities to provide advice and assistance, as far as it is reasonable to expect the public authority to do so, to anyone who is considering, or has made, a request for information to it.

It also states that any public authority which complies with the Section 45 Code of Practice in relation to the provision of advice or assistance is considered to have carried out its duty under section 16.

Regulation 9 similarly requires a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants. The Regulation goes further however in that it requires that where a public authority decides that an applicant has formulated a request in too general a manner, it should ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and assist the applicant in providing those particulars.

Where a public authority conforms to the EIR Code in relation to the provision of advice and assistance in a particular case, it will have complied with its duty to provide advice and assistance in relation to that case.

### **Section 16 and regulation 9 in practice**

A public authority's duty to provide advice and assistance is extensive and will apply to both prospective and actual applicants for information. This duty potentially applies to most, if not all, stages of the request process under both the FOIA and the EIR. The provision of advice and assistance is how a public authority interacts with an applicant in order to discover what it is that the applicant wants and, where possible, assist them in obtaining this.

Where a public authority conforms with the Section 45 Code, it will have complied with its section 16 obligations. However failure to follow the Code is not an automatic breach of section 16. This is because section 16 refers to "the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so". It is possible that one or more of the steps which the Code outlines may not be reasonable for a particular public authority to undertake in the circumstances. Therefore, non-conformity with the Code in this respect will not mean that there has been a breach of section 16.

However, the situation under the Regulation 16 Code is different. Where a public authority conforms with the Code, it will be considered to have complied with its regulation 9 obligations. But as the Code states that advice and assistance should not necessarily be limited to the steps set out within it, in practice a public authority could follow the steps suggested and still be found in breach of regulation 9 for something not covered in the Code, but nevertheless considered to be reasonable to expect as advice and assistance from a public authority.

We recommend that public authorities should treat both Codes as a minimum standard and go beyond their requirements where practicable, particularly in relation to the regulation 16 Code.

The following are examples of good practice in providing advice and assistance which go beyond the requirements of the Codes and are applicable to both the FOIA and EIR:

- Make early contact with an applicant and maintain a dialogue with them throughout the process of dealing with the request keeping them informed at every stage.
- A public authority's customer service policies should facilitate their advice and assistance duties. They should incorporate the steps outlined within the Codes.
- A public authority should properly record and document all communications relating to any necessary clarification and also the handling of any request.
- Public authorities should be sensitive to the circumstances of the applicant when considering the appropriate method of contact.

- If a public authority is unable to provide an applicant with the information they have requested in the manner which they have specified, it should discuss with the applicant whether the information can be provided in another format which is acceptable to the applicant.
- A public authority should be prepared to provide advice and assistance to an applicant whose has had their request turned down on the basis of an exemption or exception.

### **More information**

For more information on section 16 please see our guidance entitled [Advice and Assistance: Awareness Guidance 23](#) and for more information on regulation 9 please view the Department for Environment, Food and Rural Affairs' guidance entitled [Chapter 6 – Handling requests for environmental information](#).

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

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