

# Refusing a request: how to issue a refusal notice

## Freedom of Information Act 2000

### Refusing a request

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

This detailed guidance, which covers both the FOIA and the EIR, explains to practitioners in public authorities how to issue a refusal notice and what it should contain. It also sets out good practice to follow.

We have also produced related guidance: [Writing a refusal notice](#), which features template refusal notice letters. Both pieces of guidance together replace Good Practice Guidance No.1.

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## Introduction

Both the FOIA and the EIR provide a right for any person to request information held by public authorities and set out the requirements for responding to the request. Codes of Practice give further details as to the way in which authorities should handle requests. In circumstances where an authority is unable to disclose the information requested, for whatever reason, or it cannot confirm whether or not the information exists or is held, the response by the authority requires particular care. This guidance assists public authorities to comply with the FOIA and the EIR in such situations, as well as encouraging them to follow good practice.

A response in which the authority does not disclose the requested information to the requester, or does not confirm whether or not the information exists or is held, is referred to as a "refusal notice".

## Benefits of issuing a good refusal notice

There are a number of potential benefits for a public authority in following both the correct procedure and good practice when issuing refusal notices:

- it will help to enhance the authority's reputation;
- the authority may receive fewer applications for internal review;
- it should result in fewer complaints being made to the Information Commissioner about the handling of requests;
- when investigating a complaint, the Information Commissioner will consider the quality and timeliness of a refusal notice, including the application of any exemptions;
- if an appeal is made to the Information Tribunal against a decision notice, the tribunal will consider any refusal notice issued by the authority in respect of the request; and
- it will help the authority to conform with the section 45 (FOIA) and regulation 16 (EIR) Codes of Practice (the "Codes").

## Summary

In relation to refusal notices:

- A refusal notice should be issued as soon as possible and not later than 20 working days from receipt of the request.

- It must be clear and specific and it should explain the authority's decision and reasons for withholding the information.
- The notice must contain information about the authority's complaints procedure where one exists and the right of appeal to the Information Commissioner's Office.
- A refusal notice is also required when an authority neither confirms nor denies whether information is held or neither confirms nor denies whether an exemption or exception applies. However this type of refusal notice does not have to contain the same amount of detail (see below).
- If the authority does not hold the information requested, under the FOIA a formal refusal notice is not required, but the authority must confirm in writing within 20 working days that it does not hold the information which has been requested. However under the EIR a refusal notice is required, since the EIR contain a specific exception (regulation 12(4)(a)) to disclosure where information is not held.
- Failure by a public authority to conform to the FOIA and EIR Codes may lead the Information Commissioner to issue a Practice Recommendation specifying steps for the authority to take.
- There are some differences between the FOIA and the EIR in relation to refusal notices.

### **What does the FOIA say?**

The relevant provisions of the FOIA are contained in:

- Section 1: this provides a general right of access to information held by public authorities.
- Section 10: an authority must comply with section 1 within 20 working days, subject to certain provisions.
- Section 17: if a request is refused, the authority must issue a refusal notice which explains its decision, including the application of any exemptions, and sets out any complaints procedure the authority has in place, together with the applicant's right of appeal to the Information Commissioner.

Further guidance is provided in the [section 45 Code of Practice](#) .

## What do the EIR say?

The relevant provisions of the EIR are contained in:

- Regulation 5: “a public authority that holds environmental information shall make it available on request....as soon as possible and no later than 20 working days after the date of receipt of the request”.
- Regulation 14: if a request is refused, the authority must issue a refusal notice which explains its decision, including the application of any exceptions, and sets out the authority’s complaints procedure (compulsory under the EIR) together with the applicant’s right of appeal to the Information Commissioner.

Further guidance is provided in the [regulation 16 Code of Practice](#).

## FOIA or EIR?

If the information being considered within a request is environmental information, the request must be handled under the provisions of the EIR rather than the FOIA. For more detail on what constitutes environmental information, please see our guidance: [What is environmental information?](#) Therefore, when issuing a refusal notice, it is important to apply the correct legislation. Failure to do this correctly may be a breach of section 17 of the FOIA or of regulation 14 of the EIR.

### Example:

In [Archer v Information Commissioner and Salisbury District Council EA/2006/0037 \(9 May 2007\)](#) the Information Tribunal found that although both the authority and the Information Commissioner had applied the FOIA to the request and to the complaint respectively, it was the EIR which actually applied to the information in question. Hence the authority was in breach of regulation 14(3) of the EIR.

## Correct procedure for issuing a refusal notice under the FOIA

When refusing a request, a public authority must issue a refusal notice to the requester within 20 working days following the date of receipt of the request.

## Content of response

The refusal notice must state and explain the authority’s full reasoning behind its decision and must specify any exemption upon which it relies.

## Time limits

- The refusal notice must be clear and timely - issued within 20 working days.

- If an authority does not hold the information, it is not required to issue a formal refusal notice; but it must still inform the requester of the fact in writing within 20 working days.
- An authority may take further time to consider the public interest test in relation to the duty to confirm or deny or a qualified exemption. However it must issue a notice to the requester within 20 working days stating why it requires more time to come to its decision, and it must give an estimate of the date by which it expects to answer the request in full. Please refer to our guidance on [The public interest test](#).
- For further details, please see our guidance: [Time for compliance](#).

## Exemptions

- If an exemption has been applied, a refusal notice must specify the section and sub-section, and must set out the full reasoning behind the decision.
- Where more than one exemption is genuinely valid, the authority should specify all relevant sections and sub-sections separately and clearly state the reasoning behind each of its decisions and the specific information to which each applies.
- If the applied exemption is “prejudice based”, the authority must explain the likely harm which would arise from disclosure or from confirming or denying that the information is held, as appropriate. We recommend the authority to specify here whether disclosure “would prejudice” or “would be likely to prejudice”.
- If the applied exemption is a qualified one to which the public interest test applies, the authority must assess whether: “in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information” and must state its detailed reasoning in the refusal notice. For further details, please see our guidance: [The public interest test](#).

### **Example:**

In the ICO decision notice [FS50101105](#) the Commissioner found that, in its refusal notice, the public authority was in breach of section 17 in several respects. It had failed to state all exemptions it applied, it had failed to explain adequately the reasons why the exemption was engaged and why the public interest favoured maintaining a particular exemption.

- If a complaint is made to the Information Commissioner, he will consider the application of any exemptions cited in the refusal notice. The authority should aim to get it right first time. Failure to refer to an exemption later relied on

during an investigation may not be accepted by the Information Commissioner and may be a breach of the FOIA.

**Example:**

In [King v the Information Commissioner and the DWP](#) EA/2007/0085 (20 March 2008) the tribunal decided that it and the Commissioner have the power to consider exemptions raised for the first time. Whether they would actually do so would depend on the facts of the case. In [DBERR v the Information Commissioner and Friends of the Earth](#) EA/2007/0072 (29 April 2008) the tribunal confirmed that it may decide on a case by case basis whether an exemption can be claimed for the first time outside the time limits imposed by sections 10 and 17.

### Complaints procedure

In order to conform to the section 45 Code of Practice, an authority should have a complaints procedure in place, or if it does not have one it must state that fact. In both cases, the authority must describe the right to appeal to the Information Commissioner under section 50 of the FOIA, and give the ICO contact details.

**Example:**

In the ICO decision notice [FS50092955](#) one of the Commissioner's findings was that the authority had not complied with sections 17(1) and (7) as it had failed to state in its refusal notice why an exemption applied. In addition it had failed to state that it had a procedure for dealing with complaints and that the applicant had a right of appeal to the Commissioner.

### Neither confirm nor deny

In circumstances where confirming or denying whether information is held or confirming or denying whether an exemption applies would in itself entail the disclosure of exempt information, an authority is still required to issue a refusal notice. However it is not required to explain why an exemption applies or why the public interest favours maintaining the exemption or the exclusion of the duty to confirm or deny. In these circumstances, the authority should keep a record of its analysis for supply to the ICO in the event of a complaint.

**Example:**

An individual requests information about whether the police are conducting surveillance on particular properties as part of a criminal investigation. Such information would be covered by the section 30 exemption relating to investigations and proceedings. It would not be in the public interest for the police to confirm or deny which properties are under surveillance, since to do so would harm the investigations. To admit they even hold such information on a specific property would indicate that they are conducting surveillance on it. Thus the police may neither confirm nor deny whether they are conducting surveillance on any properties or even whether they hold such information.

### **Personal data under the Data Protection Act 1998**

In respect of a request for information which is actually a Subject Access Request ("SAR"), technically under the FOIA an authority is required to issue a refusal notice. However the ICO takes a practical view that where this will lead to avoidable delay, we would not expect an authority to do so, but rather to deal with the request as a SAR.

### **Vexatious or repeated requests**

If the authority wishes to rely on this exemption it must still issue a refusal notice stating whether or not it holds the information, unless the following two criteria apply:

- it has previously issued a refusal notice to the requester regarding an identical or substantially similar request, stating it is relying on section 14, and
- it would be unreasonable for the authority to have to issue a further notice.

For further details, please see our guidance: [Vexatious or repeated requests](#).

### **Transferring a request**

If an authority cannot comply with a request because it does not hold some or all of the information, the section 45 Code suggests that it should state this in its refusal notice. If the authority believes that another authority holds some or all of the information requested, the section 45 Code suggests that it should consider how best to assist the applicant with his or her request and should do the following:

- consider whether to inform the applicant that the information is held by a different authority;
- either: suggest the applicant make a request to the authority, providing contact details;
- or: with the applicant's consent, transfer the request direct to that different authority, consulting it beforehand to verify that it holds the information and that it is obliged to confirm to the applicant that it does so under the FOIA;
- transfer the request as soon as practicable, informing the applicant that it has been done; and
- when a request is transferred to a different authority, the time limit for it to respond applies from the date of transfer.

## Good practice

### Section 12

Where a public authority intends to refuse a request under section 12, it should provide advice and assistance no later than the time of the refusal notice. The section 45 Code suggests that the advice and assistance should include an indication to the requester as to what information could be provided free of charge or for a lower fee and/or advise them how to amend the request so as to obtain information within the costs ceiling.

### Section 45 Code of Practice

If the Commissioner considers that an authority's practice does not conform to the Code, he may issue a practice recommendation specifying the steps that should be taken.

## Correct procedure for issuing a refusal notice under the EIR

Many of the principles governing the refusal of requests for information made under the EIR reflect those of the FOIA.

Although an EIR request may also be made verbally, rather than just in writing, a public authority must refuse the request in writing.

## Content of response

The refusal notice must explain the authority's full reasoning behind its decision and must specify any exception upon which it relies.

## **Time limits**

- When refusing a request, a public authority must do so as soon as possible and no later than 20 working days after the date of receipt of the request.
- If the authority does not hold the information, it is required to issue a refusal notice. The public authority is therefore obliged to inform the requester of this fact within 20 working days, as with any other exception.
- If the request is complex and voluminous, the authority may extend the time limit to 40 working days, but it must notify the applicant of this within 20 working days after the date of receipt of the request.

## **Exceptions**

### **Complaints procedure**

- An authority is required to have a complaints procedure in place.
- A refusal notice must inform the requester of the right to “make representations” to the authority if he or she considers it has failed to comply with the EIR.
- A refusal notice must also state the requester’s right to appeal to the Information Commissioner and must give contact details (the enforcement and appeal provisions of the FOIA apply to the EIR).

### **Neither confirm nor deny**

For the purposes of information concerning “international relations, defence, national security or public safety”, a public authority may state in its refusal notice that it neither confirms nor denies whether it holds such information or even whether it exists. It is entitled to do this provided disclosure would “adversely affect” any of those interests and provided that it would not be in the public interest to disclose it. The circumstances in which an authority can neither confirm nor deny are therefore more limited in the EIR than under the FOIA.

### **Personal data under the Data Protection Act 1998**

A public authority may also adopt a “neither confirm nor deny” response in its refusal notice under specific circumstances relating to data protection, including where that confirmation or denial would contravene any of the data protection principles.

## Manifestly unreasonable requests

If an authority wishes to rely on the exception in regulation 12(4)(b) (“the request for information is manifestly unreasonable”) it must issue a refusal notice stating whether or not it holds the information and giving reasons for its refusal. Although there is no separate cost limit for responses to requests under the EIR, the cost of complying with a request can be taken into account when considering whether a request is manifestly unreasonable. The public authority must, in all cases, apply the public interest test. The authority should note that the FOIA and the EIR differ in various respects on this aspect; however we consider that a request that would be considered vexatious under the FOIA is likely to be manifestly unreasonable under the EIR (but “manifestly unreasonable” has a wider meaning than “vexatious”). For further details, please see our guidance: [Vexatious or repeated requests](#) as well as: [EIR: an introduction to the exceptions](#).

## Transferring a request

Under the EIR, an authority which does not hold the information requested (or part of it) but believes that a different authority (including a Scottish one) holds the information, it is obliged to do the following:

- either: transfer the request to the different public authority;
- or: give contact details of that authority to the applicant;
- in both instances it must inform the applicant fully of its action in its formal refusal notice;
- when a request is transferred to a different authority, the time limit for it to respond applies from the date of transfer;
- the regulation 16 Code gives further detailed guidance on transferring requests, including the following:
  - o the authority should consider how best to assist the applicant with his or her request;
  - o this would include assessing whether a transfer is appropriate or whether it should provide contact details to the applicant;
  - o it should consult the different authority and obtain the applicant’s consent prior to any transfer; and
  - o any transfer should take place as soon as practicable.

## Good practice

### **EIR regulation 16 Code of Practice**

When issuing a refusal notice under regulation 12(4)(c) (“the request for information is formulated in too general a manner”) the authority must provide

advice and assistance to applicants. By conforming to the regulation 16 Code, a public authority will be taken to have complied with its duty to provide advice and assistance.

The Code suggests ways in which an authority might provide advice and assistance to an applicant:

- If a request is insufficiently clear, the authority should ask for more details to enable it to respond.
- In seeking clarification, the authority should aim to assist the requester, for example by guiding him as to the sort of information which might satisfy his request, or setting out options.

**Example:**

In the case of [Boddy v Information Commissioner and North Norfolk District Council EA/2007/0074 \(23 June 2008\)](#) the tribunal decided that in a situation where, on making a request, the requester draws the authority's attention to his current dealings with the authority, then if this would affect the interpretation of the request the authority has a duty to provide advice and assistance.

If the Commissioner considers that an authority's practice does not conform to the Code, he may issue a practice recommendation specifying the steps that should be taken.

## **Conclusion**

To summarise: in relation to refusal notices, an authority should comply with the relevant obligations of the FOIA and of the EIR as well as with, respectively, the section 45 and regulation 16 Codes of Practice.

## **Additional information on aspects of the FOIA and the EIR**

This is available on specific aspects referred to in this guidance. Please refer to the ICO website as follows:

[Guidance on the FOIA](#)

[Guidance on the EIR](#)

**Comparison table: refusal notices under the FOIA and the EIR**

	<b>FOIA</b>	<b>EIR</b>
Must the refusal notice be in writing?	Yes.	Yes. The EIR do not require a request for information to be made in writing, but a refusal under regulations 12(1) or 13(1) must be in writing.
Deadline for issuing refusal notice	As soon as possible and at latest by 20 working days from date of receipt of request.	As soon as possible and at latest by 20 working days from date of receipt of request.
Can the deadline be extended?	No. You may however set a new deadline when you are applying the public interest test. You must issue a notice within the initial 20 day deadline to say that you are doing so. In that notice you must estimate how long this will take; this must take no longer than a further 20 working days.	Yes, but only where the request is complex or voluminous, in which case it can be extended to 40 working days.
Is a refusal notice required if information is not held?	No. However you must confirm that you do not hold the information within 20 working days.	Yes – cite exception under regulation 12(4)(a).
Detail behind decision required in a refusal notice	Full reasoning for decision; specify the exemption(s) relied on. You must explain the section and sub-sections applied and your consideration of the public interest test, giving the detail and balance.	Full reasoning for decision; specify the exception(s) relied on. All exceptions are subject to the public interest test and should include the detail and balance.
Include in refusal	Yes. To comply with the	Yes. It is compulsory to

## Refusing a request

notice the details of complaints procedure and right of appeal to ICO?	section 45 Code, you should state whether you have a procedure or not.	have a complaints procedure under the EIR.
Does the refusal notice need to refer to any transfer of request to a different authority?	No, but the Section 45 Code provides guidance on the procedure for this. It recommends that the authority should be as helpful as possible to the requester, including keeping them informed.	Yes. Regulation 10 specifies the procedure for transferring requests elsewhere, requiring the authority to keep the requester informed. The regulation 16 Code provides further guidance.
Is a refusal notice required in cases of “neither confirm nor deny”?	Yes.	Yes. NB the EIR give a more limited right for authorities to neither confirm nor deny than under the FOIA.

### More 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 to this area, 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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