

# Freedom of Information Act Environmental Information Regulations



Information Commissioner's Office  
Promoting public access to official information  
and protecting your personal information

## Awareness guidance 29 Means of communication

The Information Commissioner's Office (ICO) has produced this guidance as part of a series of good practice guidance designed to aid understanding and application of the Freedom of Information Act 2000. The aim is to introduce some of the key concepts in the Act and to suggest the approaches that may be taken in response to information requests.

The guidance will be developed over time in the light of practical experience.

Here we consider section 11 of the Freedom of Information Act and regulation 6 of the Environmental Information Regulations 2004 (EIR).

This guidance takes the form of frequently asked questions (FAQs).

## A The Freedom of Information Act

### 1 What does the Act say?

Section 11(1) states:

*Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely—*

- (a) the provision to the applicant of a copy of the information in permanent form or another form acceptable to the applicant,*
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and*
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,*

*the authority shall so far as is reasonably practicable give effect to that preference.*

### 2 What can an applicant ask a public authority to provide?

The applicant may ask for information to be provided in any form, for example, electronically, as paper documents or on audio or video tape. This is not an exhaustive list.

An applicant can also ask to have the information provided verbally under section 11(1)(a). In these circumstances we advise the public authority to keep a record of the conversation and the information that was provided, to be able to demonstrate it has fully complied with its duties under the Act.

### **3 What can be considered a reasonable opportunity to inspect a record?**

It is for the public authority to decide what is reasonable. It should not be a problem for many public authorities to allow an applicant to visit its premises during normal opening hours to inspect records.

The authority only need to agree to an applicant's preference 'so far as is reasonably practicable'. For example, in the case of a parish or community council which does not have its own premises, the public authority can provide the applicant with the information by any other means which are reasonable in the circumstances.

### **4 What should the authority take into consideration if it is asked to provide a digest or summary?**

Dictionary definitions of the words 'digest' and 'summary' suggest they are statements of the main points of a piece of information.

If the FOI request does not make it clear what is needed in the digest or summary, then under section 16 (the duty to provide advice and assistance), a public authority may need to ask an applicant how detailed the summary or digest should be. For more information on section 16 see [Awareness Guidance 23](#).

The public authority should give the applicant its reasons if it concludes that it is not reasonably practicable to provide a summary or digest. For example, if the information is particularly difficult to summarise, or it would exceed the prescribed cost limit to do the work. The public authority can then communicate the information by any means which are reasonable in the circumstances.

If a public authority receives follow-up requests for information relating to a summary or digest it has provided, it must not treat this as a repeated request.

### **5 Is there a duty to create information under the Freedom of Information Act?**

No. A public authority may however provide additional information in response to a request, for example, to put the information requested into context. Public authorities may find it beneficial to anticipate and address likely queries relating to the information.

### **6 What is the procedure for specifying a preferred method of communication?**

The applicant must specify their preferred method of communication, if any, when they make the FOI request.

A public authority does not have to consider a preference specified at a later time. However, where an applicant expresses a preference after the request but before the authority has begun dealing with it, the authority should consider this preference as having been made at the time of the request.

The applicant must specify the preferred form. It will not be sufficient for an applicant to ask for information in “all the forms in which it is held”. An applicant may request the information be provided by more than one of the means specified in section 11: for example, to inspect a record and be provided with a copy.

If no preference is specified, the public authority may communicate the information ‘by any means which are reasonable in the circumstances’.

### **7 Who bears the cost of supplying the information in the preferred form?**

The public authority may charge the applicant for the cost of communicating the information, for example, photocopying and posting costs. These charges must be reasonable.

If the public authority is required by other legislation to provide information in a particular form or language at no additional cost, for example, on audio tape to comply with the Disability Discrimination Act 1995, or in Welsh to comply with their Welsh Language Scheme, they may not charge for providing the information in this way.

### **8 What if the information requested is in the public authority’s publication scheme?**

Information is exempt under section 21 of the Freedom of Information Act if it is reasonably accessible to the applicant. This includes information contained within the public authority’s publication scheme. Where an applicant requests information that is within a publication scheme and specifies a particular form, the public authority should explain that as the information is already available, it does not have to comply with section 11. It should give the applicant details of where to find the information. For more information on section 21 see [Awareness Guidance 6](#).

### **9 What other considerations may a public authority take into account when considering whether it is reasonably practicable to provide the information in the form preferred by the applicant?**

An authority may take account of all the circumstances when deciding whether it is reasonably practicable to agree to the preference, for example:

- The information is contained in a particularly old or fragile document and to provide a copy of the document may have a detrimental effect on it.

- The amount of work required to meet the applicant's request would exceed the appropriate fees limit.
- Whether the information is available elsewhere, under section 21 or otherwise.
- Whether there are security or other issues which may prevent members of the public entering a building. Such barriers would not be sufficient to justify refusing the information requested. The authority would need to provide the information in another form.

Nothing in section 11 should prevent a public authority from discharging any duty to make special arrangements for people with disabilities under the Disability Discrimination Act.

### **10 What if a public authority decides that it is not reasonably practicable to provide the information in the form preferred by the applicant?**

In this case, the authority must tell the applicant and give its reasons. The duty on the public authority is then to provide the information by any means which are reasonable in the circumstances.

If the applicant is not satisfied with the decision and wants to make a complaint, they must complete the public authority's complaints procedure (if there is one). Once this process is complete, if the applicant remains dissatisfied, they may write to the ICO.

### **11 How does section 11 relate to translations?**

The following applies equally to the Freedom of Information Act and the EIR.

Section 11 and regulation 6 do not require public authorities to translate information into other languages.

Nothing in the Freedom of Information Act or the EIR overrides public authorities' duties under other statutory provisions. If a public authority is required under other legislation to produce information in an alternative language, the information which is held must be provided in the alternative language if this is requested.

An example would be an authority having to provide information in Welsh in line with its Welsh Language Scheme, or where a public authority in Northern Ireland has made a commitment in its section 75 Equality Scheme to make information available in other languages.

If a public authority has a statutory duty under the Disability Discrimination Act to provide information in another form, for example, in Braille, this will fall outside of the Freedom of Information Act and the EIR. The 'reasonably practicable' test will not apply.

If a public authority regularly deals with minority communities and holds

information in the languages of that community then a request for existing translations of information will be caught by the Freedom of Information Act and the EIR because that information will be held in that form by the public authority.

Where a public authority chooses to translate information in response to a request in a case where there is no statutory duty to do so, and the information is not held in that language, the request and the response will not fall within the scope of the Freedom of Information Act or the EIR. The Commissioner will therefore not have jurisdiction over any complaint arising out of the request.

If the public authority does not hold the information, it must tell the applicant.

## **12 How do the provisions relating to means of communication affect the duty to provide advice and assistance?**

Every authority shall provide advice and assistance 'so far as it would be reasonable to expect the authority to do so'. Appropriate advice and assistance may include, but is not limited to:

- outlining the different types of information that may meet the request; and
- providing access to indexes and catalogues of information, and in what forms it exists, to help applicants decide what information they want.

## **B Environmental Information Regulations**

### **1 What do the EIR say?**

Regulation 6(1) states:

*Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—*

- (a) it is reasonable for it to make the information available in another form or format; or*
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.*

### **2 What can an applicant ask a public authority to provide?**

As with information requested under the Freedom of Information Act, the applicant may ask for information in any form, for example, electronically, in paper form or as audio or video tape recordings. This is not an exhaustive list.

Regulation 6 on form or format does not include the provision of information in the form of a summary or digest.

However, where a summary is requested it should still be provided if it is reasonably practicable to do so, under the duty to provide advice and assistance. This is specified in the EIR code of practice issued under regulation 16.

An authority cannot provide a summary in response to a request if not asked to do so.

### **3 Is there a duty to create information under the EIR?**

There is no duty under the EIR to create information.

### **4 What is the procedure for specifying a preferred form or format?**

An applicant may specify the preferred form or format in which they would like to receive the information at any time between making a request for information and the information being supplied.

Applicants should be aware that authorities must respond to requests for information within 20 working days, or 40 working days if the information requested is particularly complex and voluminous. If a public authority receives a request for a particular form or format at a late stage, it may not be reasonable for it to comply with that preference.

If a request is made without specifying a preference, the public authority may provide the information in any form or format which is reasonable in the circumstances.

### **5 Who bears the cost of providing information?**

A public authority may charge what it considers reasonable for providing information in the specified form or format in accordance with the provisions of regulation 8 of the EIR.

### **6 What is the procedure where the public authority cannot provide the information in the form requested?**

A public authority must explain why it will not provide the information in the preferred form or format, and must provide this explanation in writing if the applicant requests this. It should also tell the applicant about the appeals procedure at this stage. Under regulation 11, an applicant has to request an internal review within 40 working days before the ICO can investigate. The ICO recommends that all explanations and information about appeals procedures are provided in writing.

### **7 How does regulation 6 relate to translations?**

See FAQ 11 in the Freedom of Information section above.

### **More information**

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

Phone: 08456 30 60 60  
01625 54 57 45

E-mail: please use the online enquiry form on our website

Website: [www.ico.gov.uk](http://www.ico.gov.uk)

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.