



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

Freedom of Information Act Environmental Information Regulations

Practical guidance: Destruction of requested information

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 understand their obligations and to promote good practice.

This guidance will address the issues surrounding the destruction of information which has been requested under FOIA or EIR. It will set out what we expect from public authorities as a matter of good practice.

Overview

- If information was destroyed before a request was received, you can say that you do not hold it but should explain why it was destroyed and advise the applicant of any other available information.
- If information is held when a FOIA request is received, you may be able to lawfully say that you do not hold it if it would normally be destroyed before the deadline for responding. However, you should as a matter of good practice suspend any planned destruction and consider disclosure as usual.
- If environmental information is held when an EIR request is received, you must consider disclosure as usual irrespective of any planned destruction.
- Destroying requested information outside of your normal policies is unlawful and may be a criminal offence if done to prevent disclosure.
- As a matter of good practice, you should keep all requested information for at least 6 months to allow for appeals to the Information Commissioner.

Destruction before request received

The right to know under FOIA and EIR applies to information held at the time the request is received. If you receive a request for information that you held in the past but has been destroyed, you will no longer hold that information. To comply with FOIA or EIR you can therefore reply to the request stating that you do not hold the information.

You should however remember that you have a duty to offer advice and assistance, under section 16 of FOIA and regulation 9 of EIR. You should

advise the applicant whether the information may be available from another public authority or other source, and whether you have any other similar or related information you may be able to provide instead. As a matter of good practice we would also expect you to explain when and why the information was destroyed.

For more information on advice and assistance, see [Advice and assistance: Awareness guidance 23](#) and [EIR advice and assistance: FAQs](#).

Routine destruction after request received - FOIA

Section 1(4) of FOIA says that the right to know applies to all information held at the time that a request is received, except information deleted before the time for responding if that deletion would have been made regardless of the request.

This means that you do not have to release the information if it is scheduled to be destroyed under your usual retention and disposal schedules before you are due to respond to the request. If the decision to delete or destroy information was prompted by the request, or if destruction is scheduled for a date later than the 20 working day deadline for responding, this cannot apply and you must still consider the request in the usual way.

However, as a matter of good practice, you should always suspend the destruction of requested information and consider the request in the usual way. Destroying the information will not conform with the [section 46 code of practice](#) on records management.

The good practice requirements are set out in paragraph 9.9 of the code:

9.9 If a record due for destruction is known to be the subject of a request for information, destruction should be delayed until disclosure has taken place or, if the authority has decided not to disclose the information, until the complaint and appeal provisions of the FOIA have been exhausted.

Routine destruction after request received – EIR

The position for environmental information under EIR is different. Regulation 5(1) says that you must make information that you hold available on request. Regulation 12(4)(a) provides an exception for information not held at the time the request is received. There is no exception for information that is held when the request is received but is due for routine destruction shortly afterwards.

You must therefore delay destruction of the information and consider the request in the usual way.

Destruction outside of retention and disposal schedules

If information is held when a FOIA request is received, destroying it outside of your normal records management policies will result in a breach of the Act. You

must confirm that you hold the information and consider disclosure, subject to any exemption.

It will also be a criminal offence to conceal or destroy information if this is done with the intention of preventing disclosure under either FOIA or EIR. The offence is set out in section 77 of FOIA and regulation 19 of EIR. Individual employees can be guilty of this offence as well as the public authority itself.

Destruction after disclosure or refusal

As a matter of good practice, the ICO and The National Archives (TNA) recommend that you should keep any requested information for 6 months after the date of your last communication about the request. This is particularly important if you have refused to disclose any part of the information.

If you have refused to disclose the information, the [section 46 code of practice](#) states that you should keep it until the complaint and appeal provisions of FOIA have been fully exhausted. This will include internal reviews, any complaint made to the ICO, and any appeals from our decision. Your refusal notice should set out the time limit for requesting an internal review. We would usually then expect complaints to us to be made within 2 months of the internal review decision. Following any decision notice we issue there are also rights of appeal to the Information Tribunal and then the courts. Given the various time limits involved and the practical difficulty of knowing exactly when appeals have been timed out, we recommend that you retain the requested information for a period of at least 6 months from the date of your last communication about the request or related appeals to allow for the appeal process.

Even if you did disclose the information, the request may indicate that there is some wider interest in the matter and that there may be other requests for it in the future. For this reason, we still recommend that you retain the information for a minimum of 6 months. If it was scheduled for destruction, you may also want to reconsider whether it is still appropriate to destroy the information and, if you do decide to go ahead with the destruction, keep a record of the reasons for that decision.

See also the TNA guidance [FOI model retention schedule](#), available from their website (www.nationalarchives.org.uk).

Other considerations

The section 46 code of practice is under review in 2008. Information about the [review](#) is available on the TNA website. The new draft code contains similar provisions on the routine destruction of requested information.

For more general information on records management and the section 46 code of practice, see [Records management FAQs: Awareness guidance 8](#) and the [TNA guidance](#) available on their website.

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 current recommended approach to this area.

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

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