



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

Freedom of Information Act Environmental Information Regulations

Reports provided by third parties

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 gives advice to public authorities on how they should handle requests for information provided to them by other bodies, with a particular focus on third-party reports. It should be read alongside the Codes of Practice issued under [section 45 of the FOIA](#) (the section 45 code) and [regulation 16 of the EIR](#).

This guidance does not cover information that has been transferred to the National Archives, the Public Records Office of Northern Ireland, or another designated place of deposit for public records (listed on the [National Archives website](#)), as these records are subject to special rules in the FOIA.

Overview

- When you are obtaining a report from another body, it is good practice to discuss with them in advance how you might respond to a request.
- The public authority receiving the request is legally responsible for making any decision about disclosure.
- It is good practice for you to consult, if possible, the body that produced the report when deciding whether to release it.
- You must answer requests within the usual time limit. It cannot be extended because you are consulting other bodies.

Receiving reports from third parties

Public authorities may receive reports produced either by other public authorities or by bodies that are not themselves subject to the FOIA or the EIR. Some reports are routinely published, for example Ofsted inspections. Others may not be because, for example, they contain sensitive information. One example would be the inspection reports that the Office of the Surveillance Commissioners (OSC) produces. The OSC (which is not a public authority for the FOIA) does not publish these, but sends them only to the public authority that has been inspected.

- The FOIA and the EIR cover information “held” by a public authority, no matter how it was obtained, and not just information you produce or use for your own business purposes. You will be said to hold the

information in a report if you have a copy of it, even if the “ownership” or copyright rests with another body, or it is also held by another authority.

- The only exception to this in the FOIA is where you hold the information solely on behalf of another person. Environmental information being held by an authority on someone else’s behalf is still covered by the EIR.
- Section 23 of the FOIA provides an absolute exemption for information received from certain security bodies. There are no other exemptions specifically for information provided by a third party.
- There is an exception at section 12(5)(f) of the EIR where disclosure would adversely affect the interests of another person who voluntarily provided the information. This exception is subject to a public interest test.

Our guidance [When is information caught by the Freedom of Information Act?](#) explains when information is regarded as being held for the purposes of the legislation.

Difficulties can often be avoided if the body or person producing the report and the body receiving it have the same expectations as to whether it will be made public.

- The section 45 code strongly recommends that you inform bodies or people giving you information that you are subject to the FOIA and/or the EIR.
- They may be able to identify any statutory bars that would prevent some or all of the information from being released.
- It is good practice for you to discuss any other concerns they may have, for example about copyright, although this may not necessarily affect the release of the information.

In some cases, the most practical solution will be for the body or person producing the report to identify information that it considers may be exempt from release, and why, or to provide sensitive information in a separate annex. However, if you receive a request, you will still have to consider whether to release the information.

- The fact that information is marked “confidential” or is in a “closed” annex does not necessarily mean you can withhold it.
- You will need to ensure that all the conditions of the exemption are met at the time of the request. For example, the exemption relating to the conduct of public affairs (section 36 of the FOIA) requires a “reasonable opinion” on the disclosure from a minister or the designated “qualified person” in the public authority dealing with the request.
- The application of exemptions and the balance of the public interest test may change over time. For example, information may become less sensitive as time passes, or new circumstances may add to the legitimate public interest in disclosure.

If you have been given an “open” or “public” version of the report, you should consider making this available as part of your [publication scheme commitment](#).

[Guidance](#) on the exemptions in the FOIA and the EIR exceptions is available on our website.

Dealing with a request

The public authority receiving a request is legally responsible for answering it and for making any decision about disclosure.

- You should not consider transferring the request to another authority unless you do not hold the information requested.
- There is no legal requirement in the FOIA or the EIR to obtain consent from the source of the report before releasing it.
- You can take into account the views of the originating body, but you are still responsible for any decision about disclosure.

You cannot refuse a request solely on the grounds that:

- the originating body is not a public authority for the purposes of the legislation;
- you believe the originating body would object to the release;
- other public authorities have refused requests for similar reports; or,
- you disagree with the contents of the report.

Consulting third parties

The section 45 code of practice says that it is good practice to contact third parties that may be affected by a request for information. It is courteous to inform the source of a report when you receive a request for it, and in some cases you will need to consult them about your response.

- Consulting the source of the report may help you identify relevant exemptions or public interest factors.
- They may advise you to give the requester more context or explanatory material, or include copyright restrictions.
- Contacting third parties will help them prepare for any effect on their work, for example press coverage or an increase in enquiries.
- Failure to consult other bodies about disclosures that relate to them or that are likely to affect their interests would not conform with the section 45 code.
- The code also says that information which has been supplied by one government department to another should not be released without notifying or consulting the originating department.

It is particularly important to consult the source of the report when considering certain exemptions, for example if you believe the information may be confidential or subject to legal restrictions on its disclosure. You should not withhold information on the grounds that disclosure would prejudice the

commercial interests of a third party, unless this is based on evidence from the third party. There is more about this in our guidance on [Commercial detriment of third parties](#).

Example:

The Information Tribunal rejected Derry City Council's argument that releasing the terms of an agreement with Ryanair would prejudice the airline's commercial interests. The Council had not consulted Ryanair, and its arguments "reflected the Council's thoughts on the point, not any representations made to it by Ryanair". The Tribunal was unwilling to "speculate" without evidence and so was "unable to conclude that Ryanair's commercial interests would be likely to be prejudiced". [Derry City Council v Information Commissioner](#) (EA/2006/0014; 11 December 2006)

This could also apply where the authority is relying on an argument that the disclosure would harm other interests of a third party, such as the effective conduct of public affairs.

Time limits

- The normal time limit for responding to requests under the FOIA and the EIR is 20 working days. Under the EIR, this can be extended to 40 days if necessary given the complexity and volume of the information.
- The time limit for responding to the request cannot be extended because you are consulting third parties. You will need to give your initial answer to the request even if the third party has not responded.
- If you need to consider the public interest test, then under the FOIA you may extend the time if it is reasonable to do so.
- It may be useful to have an agreement or written understanding with any third party from whom you frequently obtain information.

More information

- [When is information caught by the Freedom of Information Act?](#)
- [Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 \(the section 45 code\)](#)
- [Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 \(the EIR code\)](#)
- [Commercial detriment of third parties](#)
- [Information provided in confidence](#)
- [Information supplied by or relating to security bodies](#)

Transferred public records: you can find a list of places of deposit on the National Archives website at

<http://www.nationalarchives.gov.uk/archives/deposit.htm>

You can find information about the Public Records Office of Northern Ireland at www.proni.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, although individual cases will always be decided on the basis of their particular circumstances.

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

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Email: please use the online [enquiry form](#) on our website

Website: www.ico.gov.uk