

Using Freedom of Information legislation

Introduction

You have a right to know information (especially environmental information) held by public authorities such as councils or Government departments and agencies, quangos, NHS health trusts and universities. This right is enshrined in law and is upheld by [the Information Commissioner's Office](#) and the Information Tribunal.

The most well known law is the **Freedom of Information Act 2000** (FOI Act). However, the most relevant and powerful legislation for people campaigning against road schemes is the **Environmental Information Regulations 2004** (EIRs). These regulations are even stronger than the FOI Act because there are fewer reasons you can be denied information. However, unlike FOI, you can be charged a fee for EIR requests.

These laws are not just about giving you access to information, but also about placing a duty on public authorities to publish information in the first place. It is fairly straightforward to make a request:

- Check the information has not already been published
- Draw up your request, consulting the guidance available
- Submit your request using the website: [WhatDoTheyKnow](#)
- If your request is refused, follow the appeal process.

1. Guidance

The Information Commissioner's Office (ICO) produces the official guidance to making Freedom of Information & Environmental Information requests

[Official guidance](#) is also available on the gov.uk website

The Campaign for Freedom of Information has published a [very useful guide](#) to using FOI/EIR, which also includes model requests and how to challenge decisions to withhold information

Friends of the Earth has some [helpful advice](#) on your information rights.

Each public authority is required to produce a 'publication scheme' setting out what information is published, how to request more, and any charges that may apply. Before you make a request for information, take a look for the Publication Scheme on the authority's website as you may find what you need there.

Highways England's publication scheme can be found [here](#).

Local Councils are required to publish a [range of information](#) under the Transparency Code. This includes details of council expenditure, land holdings and parking accounts.

WhatDoTheyKnow

2. Making your request

We recommend you place your request using the [WhatDoTheyKnow](#) specialist website which is run by mySociety (a not-for-profit social enterprise which uses technology to foster civic engagement).

There are many benefits to this, including:

- there is a simple online form to complete
- it will ensure your request goes to the right place
- the site will track the requests for you and remind you of response deadlines
- it provides links to the documents sent in response
- it guides you through any appeals
- it keeps all the information easily available for future reference for you and for other campaigners.

First make sure that the information you wanted isn't already published, by looking through the publication scheme and searching the authority's website. If the information is already available your request will be refused.

If you consider that the information already published about the road scheme you're fighting is not good enough or you know there are documents the authority hasn't published, you can ask them to publish the information on their website as well as supplying it to you.

Once you are sure the information does not exist on the relevant organisation's website, then you are ready to make a request.

You may find it helpful to check your Council's guidance when preparing your request, even if you then use the 'What do they know' website to submit it.



Freedom of Information Act 2000

FOI or EIR - what's the difference?

You do not have to specify either FOI (Freedom of Information) or EIRs (Environmental Information Regulations) in your request: you can simply ask for the information.

If your request is related to environmental information we recommend you mention the EIRs in your request, because the requirements for disclosure are stronger and clearer. However, the authority may charge you more for responding to an EIR request.

Please do not abuse these laws by asking unnecessary or frivolous requests. If an authority receives a deluge of frivolous requests it can bundle all the requests together and refuse them on costs grounds.

Decide exactly what information you want to see. Try not to make your request too broad and vague because it may be refused on costs or other grounds. It is better to ask for something specific or something within a limited timeframe.

So instead of saying that you would like to see 'all information relating to the Sometown Bypass' you would ask for "all information relating to the planning application for the Sometown Bypass".

Including a time period for the information can be very helpful in making the volume of information manageable. For example, you might ask for 'all correspondence between Anytown Borough Council and the Department for Transport between June 2015 and June 2016.'

You will need to:

- Include your name and address
- State your request clearly
- State whether you'd like the information by post or email
- It's always a good idea to ask for an acknowledgement of your request.

You do not need to state the purpose for which you want the information. This is irrelevant and the public authority should not take any account of your motivation.

The authority has a duty to reply within 20 working days. When you submit your request make a note in your diary of when they should respond.

If there are any problems with your request the authority has a duty to advise and assist you. Once your request has been clarified, the authority has 20 working days to respond under the FOI Act (up to 40 working days under EIRs for a more complicated request).

All being well, the authority should respond within 20 working days with a decision letter and all the information you requested.



Charges for information

In theory the authority can charge you for answering the request but in practice it is very rare for them to do this as most information is now made available in electronic form. If the authority does decide to charge you it is only allowed to make you pay for the costs of photocopying and postage, not for their time in locating the information and copying it. (A notional cost of up to £25 an hour is used for calculating the cost to the organisation of answering your request.)

Unlike FOI, under EIRs, organisations can charge you a 'reasonable' amount for complying with the request. They must have a published schedule of charges in order to be able to charge for environmental information, and this should be available on their website. Many local authorities base their charges for EIR requests on the notional £25 an hour used to calculate FOI costs, but there is no standard charge so it is essential to check with each organisation concerned.

3. What if your request is turned down?

Your request may be turned down for several reasons, for example that the information has already been published, that the answer would reveal personal information about another individual or that the costs of producing the information would be excessive.

Under the FOI Act, the reasons to reject your request are called exemptions; under the EIRs they are called exceptions.

Remember that the authority cannot refuse to disclose information simply because it is embarrassing to them or would undermine them. It is in the public interest that the public see how decisions are made and why and that they are the best decisions.

The authority may apply an exemption to part of your request. For instance the authority could release a document but blank out (called redacting) the sensitive exempt information within it.

Refusal on grounds of cost

Under the FOI Act, there is a cost cap on replying to requests - £600 for Government departments and £450 for local authorities: they can refuse the request if the time taken to reply would cost more than the cap.

The ICO guidance is that staff should not calculate a cost of more than £25 per hour for their time, which gives a time limit of 18 hours' work for local authorities. Before your council refuses the request because of costs, they should contact you to discuss how your request could be answered within the fees limit.

Local authorities cannot refuse to answer EIR requests on cost grounds, but they can charge you for the time taken.



Repeat and vexatious requests

An authority can refuse you if they believe your request is a repeated or vexatious request (Section 14 of the FOI Act). Vexatious means that your request is harassing the authority or causing an unnecessary burden. It is not an excuse for your authority to get around awkward questions. Note that it is the request not the requestor that is vexatious and the authority should not pre-determine your requests.

Under the EIRs the authority can turn you down if they believe that your request is 'manifestly unreasonable' (Regulation 12 (4) (b)). This is defined in the same way as 'vexatious' in the FOI Act – that you are placing an unnecessary burden on the authority. However in both cases the authority must have firm evidence of this.

Other reasons to refuse or to redact information:

Other potential exemptions and exceptions are outlined in Part II of the Freedom of Information Act, at sections 21 to 44. These include grounds such as the information:

- is already accessible or pending publication
- could prejudice law enforcement or criminal investigation
- could affect audit functions or policy formulation
- is personal data or covered by professional or commercial privilege.

Under regulation 12 of EIRs, information does not have to be disclosed if its disclosure would adversely affect things such as public safety, intellectual property rights; legally protected local authority proceedings; and confidential commercial information.

If your request is turned down, the authority must apply a public interest test to demonstrate that it is in the public interest for the information to be refused. The law has a presumption in favour of disclosure, so the authority would have to weigh up the public interest in each instance and give sound reasons.

4. How to appeal

If you don't think your request should have been refused, appeal.

There are three stages of an appeal:

- to the authority who refused your request, to conduct an internal review
- to the Information Commissioner
- to the Information Tribunal.

Note: if you use the [WhatDoTheyKnow website](#), they will guide you through any appeals.

Stage 1. The local authority or public body in question must conduct an internal review at your request

- With EIRs you have to do so within 40 days of their initial refusal
- With the FOI Act, there isn't a time limit

Your appeal will have to be in writing (letter, fax or email). Say which aspect of the decision you are unhappy about and say why you think it is wrong, if you can. It is not your responsibility to demonstrate that the authority is wrong. The authority has to show that it has complied with the law.

An appeal under the EIRs must be dealt with by the authority as soon as possible and in any case within 40 working days.

Guidance recommends that FOI internal reviews are carried out within 20 working days. An authority should tell you at the outset how long it expects to take. The authority cannot charge you anything for making a complaint.

Stage 2. Ultimately if your dispute has not been resolved and you have exhausted the authority's complaints process, you can appeal to the Information Commissioner.

The Information Commissioner has published a guide to the complaint system which is available online [here](#).

You can complain to the Commissioner if:

- The authority has dealt with your appeal but you still believe it has failed to comply with the legislation in some way
- The authority hasn't dealt with your appeal within the required time limit or hasn't reached a decision within a 'reasonable' time

There is [a form to complete](#) to make your complaint. There is no fee to complain to the information commissioner.

The Information Commissioner's Office (ICO) will make a decision based on the evidence and will issue a decision notice. The authority has to abide by its findings.

Stage 3. If you disagree with the ICO decision you have the right to appeal to the Information Tribunal. You should make that appeal within 28 days of receiving the ICO decision. The local authority or public body can also appeal against the ICO decision. The ICO then has a further 28 days to respond. After that the Tribunal may decide on the basis of papers received or, in a minority of cases, hold a hearing. There is no legal aid for Tribunal hearings.

For more information on appealing to the Tribunal, see: [Guidance on appealing](#)
[Guidance on Tribunal procedure](#)

The Tribunal publishes lists of current and past cases. You can search its past decisions [here](#).

Additional resources

Campaign for Better Transport is not an advisory body for getting access to information. However, there are other organisations that specialise in access to information and they should be able to help you.

[Friends of the Earth Rights and Justice Centre](#)

A good [guide to the FOI Act and the EIRs](#), produced by the Campaign for Freedom of Information.