



BARNSLEY
Metropolitan Borough Council

Environmental Information Regulations Policy

Document Control

Organisation	Barnsley Metropolitan Borough Council
Title	Environmental Information Regulations
Author	ICT Manager
Owner	Senior Information Risk Owner
Commencement Date	03/10/2018
Applicable to	All Barnsley MBC employees, contractors, all elected members, or anyone working on Council premises or on behalf of the Council
Information/ Action	For information and appropriate action to comply with this policy
Review Date	Policy to be reviewed 1 year from approval or when changes are made to legislation or best practice guidance
Review Responsibility	Information Governance Board

Revision History

Date	Version	Author	Comments
July 2018	0.1	ICT Manager	Revised Policy
04/09/2018	0.2		Issued for review and feedback to Information Governance Board
20/09/2018	0.3		Approved Information Governance Board
21/09/2018	0.4		Issued for review and feedback to Senior Management Team and Trade Unions
26/09/2018	0.5		Approved Trade Unions
02/10/2018	0.6		Approved Senior Management Team
03/10/2018	1.0		Commencement Date

Document Distribution

This document will be distributed to the following for review and feedback:

Name
Information Governance Board
Senior Management Team
Trade Unions

Policy Governance

The following table identifies who is Accountable, Responsible, Informed or Consulted with regards to this policy. The following definitions apply:

Responsible – The person(s) responsible for developing and introducing the policy

Accountable – The person who has ultimate accountability and authority for the policy

Consulted – The person(s) or groups to be consulted prior to final policy implementation or amendment

Informed – The person(s) or groups to be informed after procedure implementation or amendment.

Responsible	Information Governance Board
Accountable	Senior Information Risk Owner
Consulted	Information Governance Board, Trade Unions, Senior Management Team
Informed	All Barnsley MBC employees, contractors, all elected members, or anyone working on Council premises or on behalf of the Council

Table of Contents

1	Introduction
2	Policy Statement
3	Roles, Responsibilities and Scope
4	Managing Requests for Information
4.1	Fees and cost limit
4.2	Refusing requests
4.2.1	Relationship with GDPR
5	Publication Scheme
6	Disclosure Log
7	Datasets and Re-use
8	Contracts
9	Consultation with Third Parties
10	Complaints and Internal Review
10.1	Complaints Procedures
10.2	Internal Review
10.3	Information Commissioner's Office
11	Audit, Monitoring and Review
12	Training and Awareness
13	Breach of Policy

Appendix A – Roles and Responsibilities

Appendix B – EIR Exceptions

Hyperlink to the procedures

1 Introduction

The Council is committed to complying with the provisions of the Environmental Information Regulations 2004 (EIR), which have been in force since 1st January 2005.

The EIR give rights of public access to recorded environmental information held by public authorities. In general terms, environmental information is information about land development, pollution levels, energy production and waste management.

Information which relates to the state of human health and safety e.g. contamination of food chain, living conditions; cultural sites and built structures where effects on these from the elements impact on human health and safety are also part of the remit of EIR.

The Regulations require public authorities to make environmental information available proactively; and enable members of the public to request environmental information from public authorities.

The principle behind the law is that giving the public access to environmental information will encourage greater awareness of issues that affect the environment. Greater awareness helps increase public participation in decision making; it makes public bodies more accountable and transparent and it builds public confidence and trust in them.

There is a presumption in favour of disclosure. Access to information can only be denied if an exception (i.e. an exemption) is cited in accordance with the legislation subject to the public interest test dictating that the information should not be disclosed.

The EIR complements or supports the following legislation:

- The General Data Protection Regulations that gives individuals access to personal information held about them by the Council;
- Freedom of Information Act 2000 gives access to recorded (non-environmental) information held by public authorities.
- Protection of Freedoms Act 2012 requires public authorities to provide available datasets in a re-usable format so far as reasonably practicable.
- Local Government Act 1972 that contains the main access to information rules in relation to all meetings of the Council and the formally established committees and sub-committees of the Council; and
- INSPIRE Regulations 2009, which make spatial datasets (sets of data linked to geographical locations) publicly available in a consistent and useable electronic format.
- The EIR have directly incorporated the definition of environmental information from European Directive 2003/4/EC on public access to environmental information.

In complying with its duty the Council will take account of the 'Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004'.

The [Code of Practice](#) is prepared in accordance with Regulation 16 of the EIR and provides guidance to public authorities as to the practice that would be desirable for them to follow in connection with discharging their functions under the EIR. The Council will abide by the terms of Code of Practice whenever this is possible or appropriate.

2 Policy Statement

The Council will comply with all the relevant provisions of the EIR.

The Council aims to respond to all requests promptly and within the statutory response period of 20 working days following receipt of a valid request. Under the EIR the deadline of 20 days for a response can be extended to 40 days if it is considered that the request is both complex and voluminous. The duty to provide advice and assistance under EIR requires the public authority to request that the applicant provide more particulars within 20 working days of the request where a request is formulated in too general a manner.

In cases where information is covered by an exception or other legislation, consideration is given as to whether or not it is in the public interest to disclose regardless of the exception cited.

The Council is committed to conducting its affairs in a transparent manner and enabling public access to its information whenever this is appropriate. Generally the Council will act in as open and transparent a manner as possible whilst ensuring the integrity of its information and protecting the privacy of its customers.

3 Roles, Responsibilities and Scope

This policy informs recipients of Council services, internal and external parties of the processes the Council has established for complying with the EIR.

This policy operationally applies to all employees of the Council including agency staff, contractors, all elected members, or anyone working on Council premises or on behalf of the Council. A summary of the specific roles and responsibilities is detailed in Appendix A.

This policy does not cover Subject Access Requests (requests for access to information about a living individual which could identify them). These requests are exempt from the EIR under regulation 13, and should be processed in accordance with the General Data Protection Regulations (GDPR). The Council will carefully consider its responsibilities under the GDPR before disclosing personal data about living individuals, including current and former officers, members and users of its services, where it might arise in the processing of a request for information under EIR.

4 Managing Requests for Information

EIR requests do not need to be in writing (unlike FOI requests). A request for information under the EIR can be in any form – verbally or in writing, so a request could be made by telephone, letter or email. However, for a response to be made by the Council it will need contact details to either provide the information or refuse the request. A request for information does not need to specifically mention EIR to fall within the requirements of EIR. When making a request for information, an applicant may state a preference as to the form/format in which they would like the information to be provided e.g. hardcopy/electronic etc.

A request for information can be made in the following ways:

- download, complete and return our information request form
- emailing informationrequests@barnsley.gov.uk
- submitting the request by post - the address can be found on the request form
- telephone

4.1 Fees and Cost Limit

The Council can apply a charge in line with the [cost fees limit](#). However, currently the Council do not charge.

4.2 Refusing Requests

A refusal of a request for information will only be made when it is necessary to do so. Upon refusal of a request for information, the applicant will be informed of the reasons for the decision within twenty working days, and at the same time, will be informed of the procedures for making a complaint. All exceptions in the EIR are subject to the public interest test. This means that even though information may be covered by an exception, the Council must still disclose it if the public interest in disclosing the information outweighs withholding it.

Under the EIR there is no 'cost limit' for dealing with requests, but requests that cost a disproportionate amount can be refused under regulation 12 (4) (b); Refuse requests for copies of information where it is shown that EIR Regulation 5 or 6(1) (b) has been complied with and the information is already accessible either for inspection, at a public library or published on a website, or other public resource. It is permissible to refuse vexatious requests under regulation 12(4)(b) as manifestly unreasonable, subject to a public interest test.

Information requests can be made to any member of staff directly. The expectation is that where these requests are of a 'business as usual nature', they are responded to there and then without the need to follow this policy.

An enquirer may be directed to the public resource in which they may find the information they require. The Council has in place an established service where arrangements can be made to view the Local Land Charges Register;

The Local Land Charges service can be contacted at:-

PO Box 634, Barnsley, S70 9GG

Telephone: 01226 773054

Email: locallandcharges@barnsley.gov.uk

See the Information Commissioner's List of [EIR exceptions](#) for more information.

4.2.1 Relationship with the General Data Protection Regulations

This policy does not cover Subject Access Requests (requests for access to information about a living individual which could identify them). These requests are exempt from the EIR and will be processed in accordance with the General Data Protection Act Regulations.

This policy does not cover Freedom of Information requests.

5 Publication Scheme

The [Council's Publication Scheme](#) is available on the Council's website. The Council is committed to being open and honest and the publication scheme is designed to increase transparency and allow members of the public to routinely access information relating to the functions of the Council without making an information request. This publication scheme also deals with information held in registers, required by law and other lists and registers relating to the functions of the council.

6 Disclosure Log

In addition to proactively updating its publication scheme, the Council will maintain an [online disclosure log](#) that identifies the main types of requests received and the responses given. Before making an individual request the disclosure log should be accessed to find out if the Council have already responded to a request on the matter enquiring about. The log provides details about the nature of each request, the date and the reference number.

7 Datasets and re-use

The EIR contains specific provisions relating to datasets. Under the EIR, if the information that a public authority is making available in response to a request is a dataset, and the requester has expressed a preference for an electronic copy, then, so far as reasonably practicable, the public authority must provide the dataset in an electronic form that is capable of re-use.

A dataset is a collection of factual information in electronic form (e.g. statistics or figures) that has not been materially altered since it was recorded. To be a dataset, the 'raw data' must not have been the product of analysis or interpretation.

The Protection of Freedoms Act amends the Act meaning datasets which are published in response to individual requests or through the Publication Scheme, must be made available for re-use at the point of release under the Open Government Licence, and where reasonably practicable, they will be published in a reusable format. See the Council's [Reuse of Public Sector Information Policy](#) for details of when information released under the Act can be freely reused and when there could be restrictions, the need to ask permission or the need to pay a fee.

8 Contracts

Where contractors deliver services on behalf of the Council the contract will make clear that contractors will need to fully assist the Council with their obligations under the EIR in line with the guidance set out in the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004. The contract will include details of how non-compliance with the obligations will be dealt with.

9 Consultation with Third Parties

There will be circumstances when the Council will be required to consult with third parties about information held in scope of a request in order to consider whether information is suitable for disclosure.

If the consent of a third party is required prior to disclosure of information, the Council will, at the earliest opportunity, seek to consult with that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practical.

The consultation may assist the Council in determining whether an exception under the EIR applies to the information requested, or the views of the third party may assist the Council in determining where the public interest lies. A third party's refusal to consent to disclosure of information does not necessarily mean that information will not be disclosed.

Consultation with any affected third parties will not always take place. The Council will not undertake consultation if it does not intend to disclose the information because of another exception.

10 Complaints and Internal Review

10.1 Complaints Procedure

The Council has an internal complaints procedure. Any person who is unhappy with the way in which the Council has handled their request for information may use this procedure. Correspondence should be clearly marked 'Complaint' and addressed to:

Barnsley MBC

Customer Feedback and Improvement Team
PO Box 634
Barnsley
S70 9GG
Email: informationrequests@barnsley.gov.uk

10.2 Internal Review

If the requestor is unhappy with the response, the Council should be asked to conduct an internal. A request for an internal review should be made to the Council within 40 working days from the date the Council has issued an initial response to a request and this should be made clear in that response to the applicant. The Council is not obliged to accept internal reviews after this date. The Council will notify the requester of the outcome of the internal review as soon as possible and no later than 40 working days after receiving the complaint.

10.3 Information Commissioner's Office

If you are not content with the outcome, requestors have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:-

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Website: www.ico.org.uk
Tel: 01625 545 745

The Council will maintain a record of all complaints and their outcomes.

11 Audit, Monitoring and Review

This policy, standards and procedures will be audited periodically as part of the annual internal audit work plan to ensure compliance.

This policy and all supporting procedures will be reviewed as is deemed appropriate but no less frequently than every 12 months.

Performance reports will be submitted to the Information Governance Board on a bi-monthly basis and to the Senior Management Team on a quarterly basis.

Performance reports and assurance will also be submitted to Audit.

12 Training and awareness

All employees will be given awareness, induction and update training on a yearly basis on the requirements of the EIR, Regulations and procedures, as appropriate. This includes employees who are non-network users.

13 Breach of Policy

Any deliberate breach of the EIR or a breach of this policy will be seen as misconduct and may result in disciplinary action.

References

Freedom of Information Act 2000

Environmental Information Regulations 2004

Protection of Freedoms Act 2012

General Data Protection Regulations

Human Rights Act 1998 (Article8)

Local Government Transparency Code 2014

Related documents

Data Protection Policy

Revised Code of practice issued under 45 of FOI

Records Management Policy

Information Security and Computer Usage Policy

Council Publication Scheme

Council Disclosure Log

Procedure Manual for Dealing with EIR Requests

Council Complaints Procedure

Roles and Responsibilities

Information Governance Board

The Information Governance Board (IGB) has delegated responsibility, through the SIRO and the Senior Management Team, for the development and delivery of effective information governance throughout the Council. In particular, the IGB will provide the necessary ownership and advocacy required to support, co-ordinate, promote, monitor and assure compliance with the Act.

Senior Information Risk Owner

The Executive Director, Core Services is the Council's Senior Information Risk Owner (SIRO). The SIRO has delegated authority through the Senior Management Team with specific responsibility for information risk and mitigation, ensuring that any information threats and breaches are identified, assessed and effectively managed.

Service Director Responsibilities

Service Directors are responsible for checking the accuracy and content of EIR response where deemed necessary. Advising the Customer Services Feedback and Improvement Team (CFIT) of requests which may be subject to an exemption (or, if they have reason to believe that the disclosure may be used in a contentious or malicious way) and for ensuring that they nominate a senior person within the team, department or directorate to act as a single point of contact for the EIR request.

Ensuring information held within a directorate is provided to the CFIT within the timescales outlined in this policy and supporting procedures, including any opinion and supporting detail if there is a concern that the information should not be disclosed. Ensuring requests for information within the directorate that should be dealt with under the EIR are referred promptly to the CFIT Team. Provide assistance to the CFIT with investigations into appeals and complaints.

All managers and supervisors have a responsibility for enabling effective information governance within their respective service areas and teams. In relation to this policy this includes: Managers are required to ensure that the service areas for which they are responsible have in place adequate guidance on information requests and effective measures to comply with this policy.

Customer Feedback and Improvement Team Manager (CFIT)

The CFIT Manager / Team are responsible for:

Acting as the first point of contact for all requests and to assess and log requests and allocate to the relevant service to ask them to identify any relevant, recorded information that they hold which would fulfil the request which includes providing local and effective

arrangements to ensure the timely return of relevant information to the CFIT to fulfil requests. Regularly assessing and evaluating procedures; co-ordinating the work of the CFIT, including monitoring compliance with requests;

Ensuring that any disclosure of data will be in compliance with approved policy and procedures and providing the final decision as to whether any exemption, exception or limitation applies to the information requested from the Council;

Maintenance of the Council's publication scheme and publishing details of all requests and the responses to these on the Council's disclosure log; pro-actively identifying data sets that can be published on the Council's external website;

Providing guidance and training in relation to EIR and internal procedures to managers and staff to ensure they are aware of their role and responsibility in relation to identifying and processing requests;

Reports on compliance with the policy and procedures to the Information Governance Board on a bi-monthly basis, reports to Senior Management Team on a quarterly basis and reports to Audit Committee;

To ensure impartiality, reviews of decisions where the applicant is dissatisfied with how their response has been dealt with are carried out; also acts as the link with the Information Commissioner's Officer in relation to any appeals made by dissatisfied applicants.

Employees

On receipt of an FOI request, which does not need to specify that it is an EIR request, immediately notify the CFIT Team informationrequests@barnsley.gov.uk

Responsible for ensuring that any request for information they receive is dealt with in line with the requirements of the Act and in compliance with this policy and the prevailing [procedures](#);

Employees must recognise that all recorded information may be provided to the public, and that the law requires that there will be full and unconditional disclosure in every case unless one of the statutory exemptions / exceptions applies;

Employees have a legal duty to preserve formal records. Employees must also ensure information is recorded correctly, accurately, adequately named and indexed for easy retrieval or publication. Poor records management practices are not offences in themselves, however they may lead to an inability to comply with requirements of the EIR.

Employees will, through appropriate training and responsible management observe all forms of guidance, codes of practice and procedures about the storage, closure, retention and disposal of documents and records;

Employees will be given awareness, induction and update training on the requirements of the Act, Regulations and procedures, as appropriate;

Employees will understand that breaches of this Policy may result in disciplinary action, including dismissal.

Third Parties

Third parties who are users of information supplied by the Council will be required to confirm that they will abide by the requirements of EIR and allow audits by the Council of data held on its behalf (if requested);

Indemnify the Council against any prosecutions, claims, proceedings, actions or payments of compensation or damages, without limitation.

It will abide by any Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004. In addition the Council will take account of any guidance which is issued by the Information Commissioner to promote good practice.

Any breach of any provision of the Act will be deemed as being a breach of any contract between the Council and that individual, company, partner or firm.

.

EIR Exceptions

The EIRs include a presumption in favour of disclosure. There are exceptions to disclosure however. All exceptions are subject to the Public Interest Test.

Regulation:

12 (4) (a): Information not held

When you don't hold the information that has been requested, you need to tell the applicant. Under the Regulations this counts as a refusal of the request. Information is 'held' if, at the time you received the request:

- it is in your possession; and
- you have produced or received it; or
- another person holds it on your behalf

12 (4) (b) Manifestly unreasonable requests

Allows you to refuse requests that are 'manifestly unreasonable'. Requests may be Manifestly unreasonable if:

- dealing with a request would create unreasonable costs or an unreasonable diversion of resources; and
- an equivalent request would be found 'vexatious' if it was subject to the Freedom of Information Act.

12 (4) (c) Request is too general AND organisation has provided advice

The exception under regulation 12(4) (c) allows a public authority to refuse requests that are 'formulated in too general a manner'. This means requests that:

- have more than one possible interpretation; or
- are not specific enough to allow you to identify what has been asked for.

You must initially provide advice and assistance to try and clarify the request. But if that is not forthcoming you may refuse it.

12 (4) (d) Drafts/incomplete/unfinished documents/data

The aims of the exception are to:

- protect work you may have in progress by delaying disclosure until a final or completed version can be made available. This allows you to finish ongoing work without interruption and interference from outside; and
- provide some protection from having to spend time and resources explaining or justifying ideas that are not or may never be final.

12 (4) (e) Information is an internal communication

The purpose of this exception is to allow you to discuss the merits of proposals and the implications of decisions internally without outside interference. It allows you to have a space to think in private when reaching decisions, and in this respect it overlaps with the purpose behind the exception for unfinished documents. However, the focus here is on protecting internal decision-making processes rather than protecting unfinished work, and it can apply to completed documents.

12 (5) (a) International relations, defence, national security or public safety

Public safety may be interpreted widely. The exception covers information that, if disclosed, would adversely affect the ability to protect the public, public buildings and industrial sites from accident or acts of sabotage; and where disclosing information would harm the public's health and safety.

12 (5) (b) the course of justice, ability to get a fair trial, ability of a public authority to conduct a criminal or disciplinary inquiry

Under regulation 12(5) (b), you can refuse to disclose information that would adversely affect formal legal proceedings, whether criminal or civil, including enforcement proceedings. The meaning of 'the course of justice' is broad - it covers a range of information, such as court documents and documents covered by legal professional privilege. The meaning of 'an inquiry of a criminal or disciplinary nature' is likely to include information about investigations you conduct about a potential breach of legislation, for example, planning law or environmental law. To apply this exception, the disclosure must adversely affect the inquiry by causing some real harm.

12 (5) (c) Intellectual property rights

Intellectual property rights are granted to those who create and own works that are the result of human intellectual creativity, in areas like industry, science, literature and the arts. Intellectual property rights (IPR) include copyrights, database rights, patents, trademarks and protected designs. These rights do not prevent you disclosing information under the Regulations.

12 (5) (d) Confidentiality of proceedings

You can refuse to disclose information if this would adversely affect the confidentiality of proceedings. 'Proceedings' means the organisation's formal meetings and procedures – it's unlikely to include every meeting or every procedure. The proceedings may be those of the Council or any other public authority and the confidentiality of those proceedings must be provided by law. This includes common law or a specific piece of legislation. If the law does not provide confidentiality of the proceedings, regulation 12(5) (d) will not apply.

12 (5) (e) Commercial confidentiality provided by law

You can refuse to disclose information if this would adversely affect the confidentiality of commercial or industrial information. To apply this exception, you must consider the following:

- Is the information commercial or industrial?
- Is the information subject to confidentiality provided by law?
- Is the confidentiality protecting a legitimate economic interest?
- Would disclosure adversely affect the confidentiality?

12 (5) (f) the interests of a person who provided information where they were not obliged to provide the information

This exception allows you to refuse to disclose information if this would adversely affect the interests of someone who supplied the information, and that person:

- was not under, and could not be put under, any obligation to supply it;
- supplied it expecting that it would not be disclosed to third party; and
- has not agreed to the information being supplied.

This exception protects the free flow of information to public authorities and will often apply to information sent to an ombudsman or other regulators for their investigations

12 (5) (g) the protection of the environment itself

The Regulations aim to protect the environment by ensuring greater access to environmental information, but also to protect against disclosure of information that could endanger the environment. For instance, it could provide protection for information about the nesting sites of rare birds, or the locations of vulnerable archaeological sites. You cannot use this exception for environmental information on emissions.

Reg. 13 Personal Data

Under the Regulations, we don't have to make available environmental information that is the requestor's personal data - you should deal with any part of any request for this type of information will be dealt with under the General Data Protection Regulations.