

Environmental information regulations (EIR) 2004 - overview and guidance note

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Key point summary

- 1 The Environmental Information Regulations were passed on 21 December 2004 and came into force on 1 January 2005. The Regulations outline rights of public access to environmental information held by public authorities, set out exceptions from these rights and place a number of obligations on public authorities.
- 2 The Environmental Information Regulations 2004 places two main duties on the LFB:
 - To proactively disseminate environmental information (for information collected on or after 1st January 2005 this should be by **electronic means** that are **easily accessible**).
 - To deal with individual requests for information.
- 3 The Regulations set out a number of exceptions where the rights of public access to information may be refused. All exceptions in the EIR (except those relating to personal data) are subject to the public interest test and information must be withheld where it is in the public interest to do so.
- 4 The Information Commissioner – an official reporting to parliament – is responsible for promoting good practice and for ensuring that public authorities comply with their obligations under these Regulations. The Information Commissioner can deal with complaints and has the power to issue practice recommendations or decision notices to public authorities.

1 Introduction

- 1.1 This policy provides an outline to parts of the Environmental Information Regulations 2005. It includes information about how the Regulations affect the London Fire Commissioner and guidance for staff in complying with the Act.
- 1.2 Responsibility for compliance with the Environmental Information Regulations rests with the Chief Information Officer. On a day-to-day basis, the Information Access Team (who form part of Knowledge Management Team) have responsibility for environmental information matters.

2 Background

- 2.1 The Environmental Information Regulations 2004 (the '2004 Regulations') were passed on 21 December 2004 and came into force on 1 January 2005. The 2004 Regulations detail rights of public access to environmental information held by public authorities (including LFB), set out exceptions from these rights and place a number of obligations on public authorities. The Information Commissioner is responsible for ensuring that public authorities comply with their obligations under the Regulations.
- 2.2 The LFB has two main responsibilities under the 2004 Regulations:
 - Under regulation 4(1) the LFB must progressively make environmental information available to the public by the internet and take reasonable steps to organise the information to make it easier to access and disseminate to the public. This information may be integrated into the publication scheme set up for FOIA. A publication scheme is basically a guide to the recorded information we hold which is routinely available to the public, such as fire safety advice and committee papers. Publication schemes must be approved by the Information Commissioner.
 - To deal with requests for information under regulation 5(1) of the Regulations.
- 2.3 The 2004 Regulations apply to public authorities and those providing services for them including government departments, local authorities (including fire authorities), NHS bodies, schools, the police and the Houses of Parliament.

- 2.4 Information covered by the 2004 Regulations can be found in anything written down, illustrations and visual representations, sound recordings, any type of computer file or other information in electronic form, and any other form of information which is held on record. The information can be held anywhere within LFB. It does not have to be in the form of a specific document.
- 2.5 The following are classed as environmental information:
- (a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements.
 - (b) Factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a).
 - (c) Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.
 - (d) Reports on the implementation of environmental legislation.
 - (e) Cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c).
 - (f) The state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).
- 2.6 The Information Commissioner issues guidance to public authorities about the working of the Regulations and has published a code of practice.

3 Routinely publishing environmental information

- 3.1 Fire authorities are required to routinely publish specified information on an ongoing basis through easily accessible electronic means. Information collected before 1 January 2005 must be made available, but not electronically if it was collected before 2005 in a non-electronic format. This information may be integrated into the publication scheme set up for FOIA.
- 3.2 The minimum information which must be published (subject to the Data Protection Law or any exceptions or holding the information) includes:
- Policies, plans and programmes relating to the environment.
 - Progress reports prepared or held by public authorities on the implementation of environmental legislation or policies.
 - Reports on the state of the environment.
 - Data derived from monitoring activities which affect or are likely to affect the environment.
 - Authorisations with a significant impact on the environment.
 - Environmental agreements.
 - Environmental impact studies and risk assessments.
 - Facts and analysis of facts which the LFB considers relevant and important in framing major environmental policy proposals.

4 Requests for Information

- 4.1 Anyone or any organisation from anywhere in the world can request environmental information held by the LFB. The requestor does not need to give a reason for requesting the information and does not need to reference the Regulations.
- 4.2 All requests for environmental information need to be considered under the EIR and not FOIA.
- 4.3 The duty to make available environmental information on request covers all information held by a public authority, regardless of when the information was recorded.
- 4.4 Requests for information can be made verbally or in writing (hard copy, electronic form or on social media). Any request for information, whatever form it takes is a valid request. The request can be made to any employee of a public authority. A public authority has a duty to provide advice and assistance, therefore, where a request is too general the LFB should ask the applicant to provide more information in relation to the request and assist the applicant in providing that information.
- 4.5 If supplying information covered in paragraph 2.5 (b) above and if the applicant requests it, the LFB shall either supply information on the measurement process used to compile the information, refer to a standardised procedure used or inform the applicant of where this information can be found.
- 4.6 All information not covered by an exception (refer to appendix 1), must be released to the applicant within 20 working days after the date of receipt of the request. The information made available shall be up to date, accurate and comparable. An extension of up to 20 more working days can be applied if the information requested is complex and of a large volume. The London Fire Commissioner may charge the applicant a reasonable sum covering the actual costs incurred for making the information available but not for accessing or examining the information.
- 4.7 Any enactment or rule of law that would prevent disclosure of environmental information in accordance with the Environmental Information Regulations does not apply.
- 4.8 The LFB has a duty to provide advice and assistance to prospective applicants and anyone making a request, so far as it reasonably can.
- 4.9 The LFB should transfer requests where necessary (e.g. to another public authority or a Scottish public authority where the London Fire Commissioner believes that that London Fire Commissioner holds the information). The LFB should also supply the applicant with the name and address of the relevant authority who will deal with the request and inform the applicant accordingly.

5 Exceptions and the public interest test

- 5.1 Whilst there is an express presumption of disclosure under the EIR, regulation 12 then sets out the exceptions which allow public authorities to refuse to disclose environmental information where Personal Data is not at issue under the Data Protection Law. All the non-data protection law exceptions in the EIR are subject to a public interest test. Non-data protection law exceptions relate to issues such as national security, public safety and the course of justice. Information is also exempt from the data protection law if it is accessible to the applicant by other means. This is important in respect of publication schemes; if information is already accessible under LFB's publication scheme, we do not need to provide it in response to an individual request.
- 5.2 There are two general categories of exception:
 - Exceptions where the public interest test applies:

- Those where, even though an exception exists, an authority has a duty to consider whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- Absolute exceptions:
 - Those where there is no duty to consider the public interest.

5.3 In all cases that do not include personal information under the Data Protection Law where an exception applies, to some or all of the information requested, the LFB will then have to consider whether it must override the exception because it is in the public interest to release the information. The public interest test requires the LFB to determine whether the public interest in withholding the information outweighs the public interest in releasing it. The public interest test involves considering the circumstances of each particular case and the exception that covers the information. The balance will always lie in favour of making the information available, because information may only be withheld if the public interest in withholding it is greater than the public interest in releasing it.

5.4 Where a request includes data which is personal data as defined under the Data Protection Law and comes from someone who is not the data subject then the information cannot be disclosed if:

- any of the data protection principles applied; or,
- if releasing it would cause distress/damage to the data subject and it would not be in the public interest to release the information.

However this would not apply if there was an exception which could be applied under the Data Protection Law and the public interest test had been met (refer to Policy number 351 - Data protection and privacy policy).

5.5 The exceptions to the Environmental Information Regulation are outlined further in Appendix 1 of this policy together with guidance on how to apply them.

6 The Information Commissioner

6.1 The Information Commissioner is an independent public official reporting directly to Parliament and is responsible for implementing the Environmental Information Regulations, the Freedom of Information Act and the Data Protection Law. The Information Commissioner is responsible for promoting good practice, approving/revoking publication schemes, providing information and advice about the Regulations and reporting to Parliament.

7 Enforcement

7.1 A person who has made a request for information will be able to apply to the Information Commissioner for a decision as to whether the request has been dealt with according to the Regulations. In response the Information Commissioner may serve a decision notice on the public authority and applicant setting out their final assessment as to whether or not the London Fire Commissioner has complied with the EIR. Where the decision is to disclose information previously withheld the notice will specify any steps which are required in order to comply and a time frame to carry these out.

7.2 The Information Commissioner also has the power to serve information notices and enforcement notices on public authorities which may require disclosure of information in the public interest. However, in certain circumstances this may be subject to an 'Executive override'. In such a case we will have 20 days from receipt of the notice to obtain a signed certificate from a Cabinet Minister overriding the Information Commissioner's notice. All notices may be appealed to the

independent Information Tribunal. The Information Commissioner may issue a practice recommendation in respect of non-conformity with either code of practice.

8 Appeals

- 8.1 When serving a notice of any kind, the Information Commissioner must at the same time explain the appeals mechanism. Where a decision notice has been served either the complainant or the public authority may appeal to the Information Tribunal which may uphold, overturn or vary the notice. Where an information or enforcement notice has been served, a public authority has the same right of appeal. Appeals to the High Court against decisions of the Tribunal may be made by any party to the appeal.

9 LFB's commitment to openness and requests for information

- 9.1 The Environmental Information Regulation provides an opportunity to realise one of LFB's core values: trust – being open and honesty with people. Further to this, the London Fire Commissioner has agreed a full statement on our commitment to openness (LFEPA report FEP362):

LFB has always been as open as possible with the information we hold and the work that we do. We believe in openness and honesty.

We strongly believe that by publishing information about fires, other emergencies and how we manage our services we will achieve greater understanding, trust, engagement and openness with the public. Information about our services, particularly the provision of fire safety advice, is critical to achieving our principal aim: To make London a safer city by minimising the risks and social and economic costs of fires and other hazards.

We aim to:

- Share our knowledge as widely as possible.
- Be open and transparent about the decision we make.
- Identify the information that people want and make it as widely available as possible subject to any legal constraints.
- Provide the information people want as far as possible.
- Listen to our stakeholders and the communities that we serve and seek to improve our services based upon their views.

- 9.2 Procedures for handling requests for information are outlined in Policy Number 777 - Environmental information regulation policy – general staff guidance.

10 The Information Access Team and further information

- 10.1 The Chief Information Officer is the head of service responsible for the Environmental Information Regulations. On a day-to-day basis the Information Access Team takes the corporate lead on environmental information matters including the provision of advice and guidance to staff and development of corporate procedures. The team also leads on the Data Protection Law and the Freedom of Information Act.
- 10.2 Staff with any queries on the operation of the Environmental Information Regulations should be directed to the Information Access Team in the first instance. Further information and guidance about the Regulation is available from the Information Commissioner.

Appendix 1 - Exceptions to the Environmental Information Regulations 2004

Exceptions and the public interest test

The public interest test applies to all non-data protection law exceptions in the EIR. The LFB has a duty to consider whether disclosure is required in the public interest. Where the LFB considers that the public interest in withholding the information requested outweighs the public interest in releasing it, we must inform the applicant of our reasons, unless to do so would mean releasing the exempt information.

5(3) Personal data about the applicant is not accessible under the Regulations. Access to such information is provided under the Data Protection Law.

12(3) Personal data (can only be disclosed in accordance with regulation 13).

12(4)(a) It does not hold the information when an applicant's request is received.

12(4)(b) The request is manifestly unreasonable.

12(4)(c) The request is too general (this can only be used if the applicant has been asked and has failed to provide specific details).

12(4)(d) Material in the course of completion, unfinished documents and incomplete data.

12(4)(e) Disclosure of internal communications.

12(5)(a) Adverse affect on international relations, defence, national security or public safety.

12(5)(b) Adverse affect on the course of justice, a fair trial or a criminal or disciplinary enquiry.

12(5)(c) Adverse affect on intellectual property rights.

12(5)(d) Adverse affect on the confidentiality of the proceedings of a public authority where that confidentiality is provided by law.

12(5)(e) Adverse affect on the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

12(5)(f) Adverse affect on the interests of the person who provided the information where that person (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority; (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and (iii) has not consented to its disclosure.

12(5)(g) Adverse affect on the protection of the environment to which the information relates.

12(12)(9) Information relating to emissions cannot be excluded by applying exceptions 12(5)d, e, f and g.

13 Personal data. (Note that personal data may not be used as an exception if an exemption under the Data Protection Law could be applied) (refer to Policy Number 351 - Data protection and privacy policy).

Applying exceptions

When LFB receives requests for information, staff will need to consider:

- Whether the information is covered by an exception.
- Whether the exception applies to all of the information requested.

- Where an exception does apply, is it one of the exceptions which require consideration of the public interest test?

LFB can only withhold information to which an exception applies. Sometimes this will be whole documents or files etc. but in some cases only specific pieces of exempt information within documents and files can be withheld. The remainder of the document or file etc. would have to be released.

If an exception applies to information requested and LFB decides to withhold it, we must give reasons for our decision and inform the applicant of their right to complain to the Information Commissioner.

Document history

Assessments

An equality, sustainability or health, safety and welfare impact assessment and/or a risk assessment was last completed on:

EIA	06/12/2011	SDIA	H - 15/11/2011	HSWIA	12/02/2019	RA	
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Audit trail

Listed below is a brief audit trail, detailing amendments made to this policy/procedure.

Page/para nos.	Brief description of change	Date
Pg 4 para 4.6	Reference to staff charging removed.	09/02/2012
Throughout	Department name change: Knowledge and Document Management Team has been replaced by Knowledge Management Team.	21/03/2012
Page 4, Para 3.3	Para 3.3 was link to PN322 and has been removed due to policy being withdrawn.	19/06/2014
Page 9	'Subjects list' table - template updated.	23/12/2014
Throughout	Reviewed as current with no changes made.	29/01/2015
Throughout	Reviewed as current with no changes made.	13/04/2018
Throughout	Changes made to team and department names to reflect the change in organisational structure and governance (the abolition of the London Fire and Emergency Planning Authority, now replaced with the London Fire Commissioner).	07/12/2018
Throughout	Reviewed as current minor changes made	27/09/2019
Throughout	Reference to the Data Protection Act (DPA) replaced with the Data Protection Law.	24/06/2022
Throughout	Reviewed as current, Knowledge Management Team (KMT) replaced with Information Access Team (IAT) and minor changes made.	06/02/2023

Subject list

You can find this policy under the following subjects.

Information access	Information sharing
Legislation	Public access

Freedom of Information Act exemptions

This policy/procedure has been securely marked due to:

Considered by: (responsible work team)	FOIA exemption	Security marking classification