

**Ministry of Defence Access to Information
Guidance Note**

Version 6

March 2009

Guidance Note B3: Environmental Information Regulations 2004

If you are answering a request for environmental information, you must also read Guidance Notes [B4: Applying the EIRs 2004](#) and [E7: EIR exceptions](#)

Main features of the Regulations

1. As with the FOI Act, the EIRs create a general right of access to information, subject to certain exceptions. The differences between the EIRs and the FOI Act are outlined in [Guidance Note B4: Applying the EIR 2004](#). The EIRs 2004 require public and other authorities to:
 - Review the service they are already providing to the public for supplying environmental information, so that information can be provided proactively and requests for information (RFIs) can be met more promptly and, where possible, more economically;
 - Organise the environmental information they hold in a manner which is relevant to the authority's functions;
 - Proactively disseminate environmental information;
 - Provide advice and assistance to persons making requests for environmental information;
 - Make environmental information available to any person who requests it within 20 working days, or within 40 working days if additional time is required. Exceptionally, it should be noted that
 - (i) where advance payment has been requested for the provision of information the period between requesting the payment and its receipt does not count towards the 20 working days for response (or 40 working days if additional time to answer the RFI is required); and
 - (ii) if a request is formulated in too general a manner, and MOD needs to request more particulars from the applicant in order to action the RFI, then the 20 working days period stops when that request is made to the applicant and resumes when the applicant responds;
 - Refuse RFIs only in accordance with the limited exceptions available, giving reasons and details of the mechanisms available for re-consideration and appeal; and
 - Have in place an internal procedure to consider any complaints.

Who do the Regulations apply to

2. The EIRs apply to all public authorities covered by the FOI Act. (In line with the interpretation of a 'public authority' established in relation to the FOI Act, the MOD, incorporating the Armed Forces and the MOD Police, is regarded as one authority under the EIRs.) The Special Forces and units of the Armed Forces required to assist GCHQ are subject to the EIRs.

2.1 The EIRs also cover other organisations outside the scope of the FOI Act, applying to:

- (a) Any other body, office holder or person that carries out functions [includes the provision of services] of public administration in relation to the environment; and
- (b) Any other body or person which is under the control of any of the above bodies and that has public responsibilities, exercises functions of a public nature relating to the environment, or provides public services in relation to the environment in England, Wales or Northern Ireland.

2.2 The existence of one contract between, for example, a government body and a private company, will not necessarily bring that company within the scope of the regime, though it may do so. Each case will need to be considered on its merits. There can be no comprehensive list of

**Ministry of Defence Access to Information
Guidance Note**

Version 6

March 2009

those bodies that are under the control of another body, because such relationships are dynamic and are prone to change. This means that bodies may move out of or into the scope of these Regulations.

2.3 Ministry of Justice (MOJ) advice regarding contractors who are potentially covered by the EIR is that public authorities should “err on the cautious side and assume that they are all covered” and mention to contractors that they may be asked for information that is (a) environmental and (b) relates to the work done by the contractor on behalf of the public authority. MOJ do not consider this should be an added burden or additional cost as reputable companies should be able to provide such information anyway and will often be part of the contract bidding process. MOJ recommend that authorities explain to their contractors when making new contracts that EIRs mean that confidentiality cannot be completely guaranteed.

2.4 The Regulations do not apply to any public authority to the extent that it is acting in a judicial or legislative capacity. For example, Magistrates Courts, Criminal Courts, Courts Martial, Coroners and other courts or tribunals all carry out judicial or legislative functions. These public authorities are, however, public authorities for the purpose of these regulations, to the extent that they carry out other functions, such as the management of their own estate and operations. The keeping of records by these public authorities after the completion of any relevant judicial procedure or appeal period that applies is also subject to this regime.

What information is covered

3. Experience from the implementation of the environmental information regime established under EIRs 1992 has shown that “environmental information” is interpreted very broadly. The Government has treated all information relating to genetically modified (GM) crop trials, to pesticide testing, and to land-use planning (including the reasons for decisions to approve as well as to refuse planning permission) as environmental information. The definition would also include reports on the implementation of environmental legislation and any analysis resulting from an appraisal of policy, including any Regulatory Impact Assessment (RIA).

3.1 The definition of environmental information in EIRs 2004 is very wide and covers any information that relates to:

- Air and atmosphere, water, land or soil
- Flora or fauna
- The built environment
- Human health and safety
- Any activities or decisions affecting, or likely to affect, any of the above (including for example, any noise or other nuisance, or environmental management programmes).

3.2 Specifically, the Regulations state that information “includes any information in written, visual, aural, electronic or any other material form on:

- (a) The state of 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 those 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 state of the elements of the environment referred to in (a);

**Ministry of Defence Access to Information
Guidance Note**

Version 6

March 2009

- (c) Measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect, or intended to protect the elements and factors referred to in (a) and (b) above;
- (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); and
- (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) above or, through those elements, by any of the matters referred to in (b) and (c)."

3.3 Guidance published on the Defra website:

<http://www.defra.gov.uk/corporate/opengov/eir/index.htm> has clarified these definitions, as follows:

- **Air** should be taken to include the air within buildings and other natural and man-made structures above and below the ground and in air-conditioning systems;
- **Water** should be taken to include underground and surface waters (both natural and in man-made structures), sewage and foul water; the latter to include inland waters (i.e. rivers, canals, lakes), estuaries and seas; water table and aquifers;
- **Soil** should be taken to include the in situ upper layer of the mantle rock in which plants grow;
- **Land and Landscape** should be taken to include all land surfaces, buildings, caves and underground strata. Land covered by water is also included;
- **A natural site** should be taken to include areas identified by reason of their flora, fauna, geological or physiographical features (e.g. Sites of Special Scientific Interest (SSSIs)) or general environmental quality (e.g. Areas of Outstanding Natural Beauty (AONBs));
- **Biological diversity** should be taken to include species of flora and fauna. Article 2 of the Convention on Biological Diversity 1992 defines the term as "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems". It includes dead and extinct individual organisms and species;
- **Human health and safety and conditions of human life** include human response to physical, chemical and biological agents delivered through environmental media of water, air, land, and biodiversity, etc;
- **Built structures** should be taken to include structures, roads and other infrastructure created by mankind and includes ancient and historic monuments;
- The **state** (of...) should be taken to include physical, chemical, electromagnetic, radiological and biological conditions at any moment in time;
- **Emissions**, including discharges and other releases into the environment wherever they occur should be taken to include the direct or indirect release of substances, liquids, gases, radiation (whether ionising or non-ionising), vibrations, light or noise from individual or diffuse sources into or onto air, water or land;
- **Measures** include administrative measures and environmental management programmes such as permit schemes, management contracts, land-use planning regimes and permits, regeneration and transport development plans and proposals;
- **Effect** includes direct and indirect effect; and
- **Economic Analyses** include financial analyses.

Formats of environmental information

**Ministry of Defence Access to Information
Guidance Note**

Version 6

March 2009

4. Environmental information can be in any recorded format: written, visual, audio taped or database form. It includes information in documents, pictures and records, where records are taken to include registers, reports, returns, computer records and other non-documentary records. Maps will generally contain environmental information. No types of information are excluded from the potential ambit of environmental information. It includes, for example, information contained in all types of documents such as decision letters, applications, inspection reports, concession agreements, contracts, tables, databases, spreadsheets, e-mails, photographs, sketches and handwritten notes or drawings and covers opinions and advice as well as facts.

4.1 Environmental information does not include non-existent information that could be created by manipulating existing information, although a digest or summary of this information may be created from existing data and provided in response to a RFI. Nor does it include information that does not exist until further research has been carried out. Similarly, it does not include information destroyed in accordance with established records management procedures (but see guidance below concerning the offence of altering records to avoid disclosure).

4.2 **“Information” includes information relating to the way information was obtained, and any guidance about its potential accuracy or potential to mislead.** Public authorities have been advised to consider the accuracy of any information they hold. Information could be based on opinion rather than fact. If so, this should be made clear. In addition, information could be inferred, dependent on forecasts, or derived from samples. It could come from a third party and be of unspecified reliability or selected by a supplier in order to argue a particular point of view. **In cases where validation could be costly, bodies are advised to protect themselves by issuing a disclaimer addressing issues to be taken into account in interpreting information released to the public.** Such a disclaimer could address the information’s accuracy, its source and any other known limitations that would need to be taken into account in interpreting it. For example, where the information requested is derived from a very small statistical sample, it may be appropriate to make it clear that this is the case and that it would be unwise to rely upon it.

4.3 Regulation 5(4) requires that information made available be “up to date, accurate and comparable, so far as the public authority reasonably believes”. There is no limit on historical data. If environmental information currently exists, it is covered by EIRs 2004, no matter when the information was created or gathered. Likewise, there is no geographical restriction; the information may relate to anywhere in the world. So, for example, information on the impact upon the environment of the use of Defence Estates for military training purposes, such as troop movements or the use of overseas bases, is included within the definition of environmental information for the purpose of the EIRs.

4.4 EIRs 2004 apply to any information held by or on behalf of a body **whether or not it was obtained as a result of that body’s environmental responsibilities.** It includes information collected before EIRs 2004 came into force (i.e. before 1 January 2005). Thus, it includes information held within the body’s buildings or elsewhere, held on its own behalf or on behalf of others (e.g. for consultants or private companies), and it includes information held by others on behalf of the public authority (e.g. by consultants, private companies or in archives). Environmental information includes information passed for safekeeping to the National Archives because ownership still resides with the providing body until such time as it is released for general inspection. However, it does not include private papers held in archives.

4.5 The EIRs also cover information, which a public authority holds on behalf of a third party. Under the EIRs, ‘holding’ environmental information includes holding a copy of a record produced or supplied by another person or body. It includes information collected before the Regulations came into force. It includes, therefore, information held within the body’s buildings or elsewhere, held on its own behalf or on behalf of others (e.g. for consultants or private companies), as well as

**Ministry of Defence Access to Information
Guidance Note**

Version 6

March 2009

information held by others on behalf of the public authority (e.g. by consultants, private companies or in archives). Where information is held on behalf of another person or body (e.g. information stored in the main MOD archives) it will generally be appropriate to consult on whether the environmental information requested should be supplied.

EIRs and other statutory provisions

5. There are other statutory provisions relating to public access to environmental information, some of which may require less information to be made available than do the EIRs. Regulation 5(6) of the EIRs provides that any enactment or rule of law that would prevent disclosure of information in accordance with the Regulations shall not apply. Statutory bars are a useful indicator there is likely to be a strong public interest in withholding information and exceptions may apply to information, consider:

- Environmental Information contained in documents of the institutions of the European Community is subject to EC Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents. The Regulations have yet to be updated to reflect the requirements of the Aarhus Convention, as they will need to be, if they are to be in accordance with the commitment the European Community has made by becoming a signatory to that Convention. **Until the position on this is clear, cases where requests have been made for environmental information including environmental information contained in documents of the institutions of the European Community should be referred to the Directorate of Safety and Claims for advice.**
- Where environmental information contains personal information, this can only be released if this is consistent with the provisions of the Data Protection Act.

See also [Guidance Note B2 on the DPA](#)