



MOD FOI/EIRS Compliance Notes

Initial Handling of Requests for Information

CN4: Environmental Information Regulations (EIRs)

Document history

<i>Version No</i>	<i>Reference</i>	<i>Date Issued</i>	<i>Review Date</i>
1	CIO-3-19-1-3	September 2012	September 2013

What this is about:

This note provides an overview of the Environmental Information Regulations (EIRs), the type of information covered by EIRs, the main exceptions that MOD is likely to engage and the main differences between the FOIA and EIRs.

Detail:

In some cases, requests for information will be more properly considered under the EIRs than FOIA. The EIRs promote the release of as much environmental information as possible to enable increased public participation in environmental decision making. Even if a requester specifically asks for information under FOI you should consider whether handling the request under the EIRs would be more appropriate.

The definition of environmental information is very wide. It can cover information which may not obviously appear to be environmental at first glance but falls under the definition of environmental information because it relates in some way indirect way to the environment, e.g. what effect does submarine sonar have on dolphins?" In this request, a factor (energy) is being asked about, which is affecting the state of the environment (biodiversity).

The type of information covered by EIRs is:

- Information about air, water, soil, land, flora and fauna, energy, noise waste and emissions;
- Any decisions, measures and activities affecting or likely to affect any of the above;
- Financial and cost benefit analysis used in relation to the above;
- Information about human health and the food chain, built structures and cultural sites.

There is a presumption under EIRs that environmental information must be released, unless there are strong public considerations to justify withholding it which outweigh the public interest in release. The EIRS have fewer exceptions (exemptions) than the FOIA but they protect against the same broad types of harm that may arise from disclosure.

Exceptions

The exceptions most likely to be used by MOD are 12(5)(a) which states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety or 12(5)(e) which deals with the confidentiality of commercial or industrial information. Exception 12(3) and 13(1) can be engaged to withhold personal data in the same way as personal information can be withheld under Section 40 of the FOIA.

MOD FOI/EIRS Compliance Notes

Main Differences from the FOIA

- There is no requirement under the EIRs for requests to be in writing.
- There is no “appropriate limit” on the cost of dealing with a request under EIRs which means that an authority cannot refuse to process a request on grounds directly similar to Section 12 of the FOI Act although if a request is exceptionally costly it may be possible to engage exception 12(4)(b) “manifestly unreasonable” request.
- The criterion “adverse effect” is similar to that of “prejudice” under the FOIA but not identical. Whereas the “prejudice” criterion under the Act is “would, or would be likely to prejudice”, for “adverse effect” the harm caused by the release of information must be “probable” rather than “merely likely” to cause harm.

Borderline FOI/EIR Cases

- It will not always be clear from a request which information regime is appropriate. If you are unsure as to whether the information is environmental or not you should use the regime you consider to be most appropriate.
- If the request is very borderline it may be advisable to consider the use of both regimes. You can respond by stating that to the extent that the information is “environmental information” the EIRs are engaged and to the extent that the information is not “environmental information” the FOI Act is engaged, stating the reasons and the public interest arguments.
- Where the public interest favours withholding the information in question, the application of the public interest test will generally lead to the same conclusion under either regime although you must take into account the differences between “adverse effect” and “prejudice” as described above.

Example of a Case

Request: All papers relating to the financing of a pipeline by the MOD, foreign governments and a major private company.

FOI Scenario: The public authority holds information on how much might be raised by refinancing an existing pipeline or a new share issue on the part of the governments and the private company involved. Because there is no direct impact on the elements of the environment from the refinancing activity and there is no consequential link between the activity and its effect on the elements listed above, the information is not environmental and the request should be dealt with under the FOI Act.

EIRs Scenario: The information held is on the financing or economic benefits of a new pipeline and may include the effect of the pipeline on supplies to industry; possible changes in fuel costs; economic impact on arable land or the cost of damage to the soil from leakages. Because of the clear impact of the new pipeline on the elements of the environment, the request should be dealt with under the EIRs.

Further Information

DEFRA website:

Environmental Information Regulations

<http://archive.defra.gov.uk/corporate/policy/opengov/eir/index.htm>

MOD FOI/EIRS Compliance Notes

ICO website:

Guide to the EIRs

http://www.ico.gov.uk/for_organisations/environmental_information/guide.aspx